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Presidential Documents

Title 3—

The President

Presidential Determination No. 2003–28 of July 29, 2003

Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court

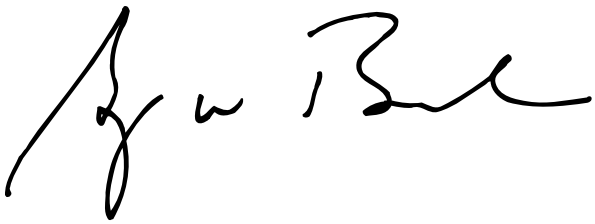
Memorandum for the Secretary of State

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002 (the ''Act''), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby:

• Determine that Albania, Bosnia and Herzegovina, Djibouti, Mauritius, and Zambia have each entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such countries; and

• Waive the prohibition of section 2007(a) of the Act with respect to these countries for as long as such agreement remains in force.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 29, 2003.

[FR Doc. 03–20503
Filed 8–8–03; 8:45 am]
Billing code 4710–10–P

Presidential Documents

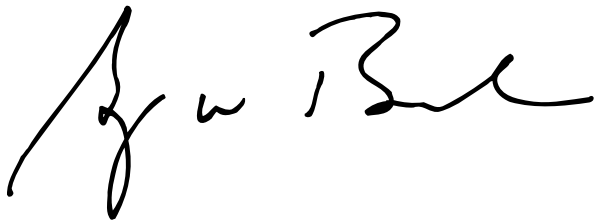
Presidential Determination No. 2003–29 of August 4, 2003

Presidential Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Consistent with section (2)(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $26 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund for a contribution to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to meet unexpected, urgent refugee needs in the West Bank and Gaza.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to arrange for the publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 4, 2003.

[FR Doc. 03–20504
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Rules and Regulations

Federal Register

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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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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM260, Special Conditions No. 25–242–SC]

Special Conditions: Dassault Model Falcon 10 Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Model Falcon 10 series airplanes. These airplanes, as modified by Frederick A. Whitson, will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of the IS&S Digital Air Data System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 31, 2003. Comments must be received on or before September 10, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM260, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM260. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment are unnecessary in accordance with 14 CFR 11.38, because the FAA has provided previous opportunities to comment on substantially identical special conditions and has fully considered and addressed all the substantive comments received. Based on a review of the comment history and the comment resolution, the FAA is satisfied that new comments are unlikely. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 3, 2003, Frederick A. Whitson, 7700 Ouray Road, Albuquerque, NM 87120, applied to the FAA, Fort Worth Special Certification Office, for a supplemental type certificate (STC) to modify certain Dassault Model Falcon 10 series airplanes. These airplanes are two-flightcrew, two-engine airplanes. The proposed modification incorporates the installation of an IS&S Digital Air Data System. This system replaces the equipment originally installed in these airplanes, which was not accurate enough for reduced vertical separation minimum (RVSM) requirements. The information presented by this equipment is flight critical. The IS&S Digital Air Data System to be installed in this airplane has the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Frederick A. Whitson must show that the modified Dassault Model Falcon 10 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The regulations incorporated by reference in Type Certificate No. A33EU include 14 CFR part 25 dated February 1, 1964, including Amendments Nos. 25–1 through 25–20. Type Certificate A33EU was issued September 20, 1973.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the modified Dassault Model Falcon 10 series airplanes, as modified by Frederick A. Whitson, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 10 series airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Frederick A. Whitson apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model.

Novel or Unusual Design Features

The modified Falcon 10 will incorporate new avionics/electronics and electrical systems that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. Accordingly, these instruments are considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Falcon 10. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the following table for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz-100 kHz	50	50
100 kHz-500 kHz	50	50
500 kHz-2 MHz	50	50
2 MHz-30 MHz	100	100
30 MHz-70 MHz	50	50
70 MHz-100 MHz	50	50
100 MHz-200 MHz	100	100
200 MHz-400 MHz	100	100
400 MHz-700 MHz	700	50
700 MHz-1 GHz	700	100
1 GHz-2 GHz	2000	200
2 GHz-4 GHz	3000	200
4 GHz-6 GHz	3000	200
6 GHz-8 GHz	1000	200
8 GHz-12 GHz	3000	300
12 GHz-18 GHz	2000	200
18 GHz-40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Dassault Model Falcon 10 series airplanes modified by Frederick A. Whitson to include an IS&S Digital Air Data System. Should Frederick A. Whitson apply at a later date for a supplemental type certificate to modify any other model already included on Type Certificate No. A33EU to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain design features on the Dassault Model Falcon 10 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Dassault Model Falcon 10 series airplanes modified by Frederick A. Whitson:

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 31, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20400 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–17–AD; Amendment 39–13215; AD 2003–08–51]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 369A, D, E, H, HE, HM, HS, F, and FF Helicopters; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects Airworthiness Directive (AD) 2003–08–51 for the specified MD Helicopters, Inc. helicopters that was published in the **Federal Register** on July 2, 2003 (68 FR 39449). The AD contains an incorrect part number (P/N). In all other respects, the original document remains the same.

DATES: Effective July 17, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–08–51, issued on April 15, 2003, which contained the requirements of this amendment.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA issued a final rule AD 2003–08–51, on June 3, 2003 (68 FR 39449, July 2, 2003). The following correction is needed:

The last P/N listed in paragraph (c) of the AD is incorrectly listed as 500P3500–70; the correct P/N is 500P3500–701. Therefore, the P/N needs correcting.

Since no other part of the regulatory information has been revised, the final rule is not being republished.

Correction of the Publication

■ Accordingly, the publication on July 2, 2003 of the final rule (AD 2003–08–51), which was the subject of FR Doc. 03–16687, is corrected as follows:

§ 39.13 [Corrected]

■ On page 39451, in the second column, paragraph (c), the last part number, ''500P3500–70,'' in that paragraph is corrected to read ''500P3500–701''.

Issued in Fort Worth, Texas, on August 1, 2003.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–20237 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14856; Airspace Docket No. 03–AAL–06]

Establishment of Class E Airspace; Igiugig, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Igiugig, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP). This rule results in new Class E airspace upward from 700 ft. above the ground at Igiugig, AK.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Monday, May 5, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. above the surface at Igiugig, AK (68 FR 23625). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new SIAPs for the Igiugig Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) Runway 05 original, and (2) RNAV (GPS) Runway 23 original. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Iguigig, Alaska. This additional Class E airspace is being created to accomodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Igiugig Airport, Igiugig, Alaska.

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 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; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Igiugig, AK [New]

Igiugig Airport, AK
(Lat. 59°19′27″ N., long. 155°54′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Igiugig Airport.

* * * * *

Issued in Anchorage, AK, on July 29, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–20402 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14854; Airspace Docket No. 03–AAL–05]

Establishment of Class E Airspace; Nelson Lagoon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Nelson Lagoon, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP) and one Departure Procedure (DP). This rule results in new Class E airspace upward from 700 ft. above the ground at Nelson Lagoon, AK.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Monday, May 5, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. above the surface at Nelson Lagoon, AK (68 FR 23626). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new SIAPs and one new DP for the Nelson Lagoon Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) Runway 08 original, and (2) RNAV (GPS) Runway 26 original and the new DP is the Binal One RNAV Departure. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Nelson Lagoon, Alaska. This additional Class E airspace is being created to accomodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Nelson Lagoon Airport, Nelson Lagoon, Alaska.

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 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; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Nelson Lagoon, AK [New]

Nelson Lagoon Airport, AK
(lat. 56°00′27″ N., long. 161°09′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Nelson Lagoon Airport.

* * * * *

Issued in Anchorage, AK, on July 29, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–20403 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14855; Airspace Docket No. 03–AAL–04]

Establishment of Class E Airspace; Pilot Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Pilot Point, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP) and one Departure Procedure (DP). This rule results in new Class E airspace upward from 700 ft. and 1,200 ft. above the ground at Pilot Point, AK.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* .

SUPPLEMENTARY INFORMATION:

History

On Monday, May 5, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. above the surface at Pilot Point, AK (68 FR 23624). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new SIAPs and one new DP for the Pilot Point Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) Runway 25 original, and (2) RNAV (GPS) Runway 07 original and the new DP is the Zilko One RNAV Departure. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Pilot Point, Alaska. This additional Class E airspace is being created to accomodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Pilot Point Airport, Pilot Point, Alaska.

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 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; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Pilot Point, AK [New]

Pilot Point Airport, AK

(Lat. 57°34′49″N., long. 157°74′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Pilot Point Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 57°51′00″N. long. 158°03′00″W., to lat. 57°51′00″N. long. 157°05′00″W., to lat. 57°24′45″N. long. 157°05′00″W., to lat. 57°24′45″N. long. 158°03′00″W., to the point of beginning.

* * * * *

Issued in Anchorage, AK, on July 29, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–20404 Filed 8–8–01; 8:45 am

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') amends its Appliance Labeling Rule (''Rule'') by publishing new ranges of comparability to be used on required labels for standard dishwashers. The Commission also announces that the current ranges of comparability for compact dishwashers, central air conditioners, and heat pumps will remain in effect until further notice. Finally, the Commission amends the portions of Appendices H (Cooling Performance and Cost for Central Air Conditioners) and I (Heating Performance and Cost for Central Air Conditioners) to reflect the current (2003) Representative Average Unit Cost of Electricity.

EFFECTIVE DATE: The amendments announced in this document will become effective November 10, 2003.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade

Commission, Washington, DC 20580 (202–326–2889).

SUPPLEMENTARY INFORMATION: The Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 (''EPCA'').[1] The Rule covers several categories of major household appliances including dishwashers.

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information on labels consistent with these changes, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

I. 2003 Dishwasher Ranges

The Commission has analyzed the annual data submissions for dishwashers. The data submissions show a significant change in the low and high ends of the range of comparability scale for standard models.[3] Accordingly, the Commission is publishing a new range of comparability for standard dishwashers in Appendix C2 of the Rule. The range for compact dishwashers has not changed significantly. The new range of comparability for standard dishwashers supersedes the current range, which was published on July 19, 2002 (67 FR 47443). Manufacturers of these dishwashers must base the disclosures of estimated annual operating cost required at the bottom of EnergyGuide labels for standard-sized dishwashers on the 2003 Representative Average Unit Costs of Energy for electricity (8.41 cents per kiloWatt-hour) and natural gas (81.6 cents per therm) that were published by DOE on April 9, 2003 (68 FR 17361) and by the Commission on May 5, 2003 (68 FR 23584).

II. 2003 Central Air Conditioner and Heat Pump Information

The annual submissions of data for central air conditioners and heat pumps have been made to the Commission. The ranges of comparability for central air conditioners and heat pumps have not changed by more than 15% from the current ranges for these products. Therefore, the current ranges for these products, which were published on September 16, 1996 (61 FR 48620), will remain in effect until further notice.

III. Cost Figures for Central Air Conditioner and Heat Pump Fact Sheets

The Commission is amending the cost calculation formulas in Appendices H and I to Part 305 that manufacturers of central air conditioners and heat pumps must include on fact sheets and in directories to reflect this year's energy costs figures published by DOE. These routine amendments will become effective November 10, 2003.

IV. Administrative Procedure Act

The amendments published in this notice involve routine, technical and minor, or conforming changes to the labeling requirements in the Rule. These technical amendments merely provide a routine change to the range and cost information required on EnergyGuide labels and fact sheets. Accordingly, the Commission finds for good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

V. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. These technical amendments merely provide a routine change to the range information required on EnergyGuide labels. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

In a June 13, 1988 notice (53 FR 22106), the Commission stated that the Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.[4] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (''OMB'') and assigned OMB Control No. 3084–0068. OMB has reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling,

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy (''DOE'') to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for dishwashers are due June 1. Reports for central air conditioners and heat pumps are due July 1.

[3] The Commission's classification of ''Standard'' and ''Compact'' dishwashers is based on internal load capacity. Appendix C of the Commission's Rule defines ''Compact'' as including countertop dishwasher models with a capacity of fewer than eight (8) place settings and ''Standard'' as including portable or built-in dishwasher models with a capacity of eight (8) or more place settings. The Rule requires that place settings be determined in accordance with appendix C to 10 CFR part 430, subpart B, of DOE's energy conservation standards program.

[4] 44 U.S.C. 3501–3520.

Reporting and recordkeeping requirements.

■ Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

■ 1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Appendix C2 to Part 305 is revised to read as follows:

Appendix C2 to Part 305—Standard Dishwashers

Range Information

''Standard'' includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Standard	222	653

Cost Information

When the above ranges of comparability are used on EnergyGuide labels for standard-sized dishwashers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2003 Representative Average Unit Costs for electricity (8.41¢ per kiloWatt-hour) and natural gas (81.6¢ per therm), and the text below the box must identify the costs as such.

■ 3. Section 2 of Appendix H of Part 305 is amended as follows:

■ a. By removing the figure ''8.28¢'' wherever it appears and by adding, in its place, the figure ''8.41¢''.

■ b. By removing the figure ''12.42¢'' wherever it appears and by adding, in its place, the figure ''12.62¢'' in the *Example* after the formula.

■ 4. In section 2 of Appendix H of Part 305 the second formula is removed and the first and third formulas are revised to read as follows:

Appendix H to Part 305—Cooling Performance and Cost for Central Air Conditioners

* * * * *

$$\text{Your estimated cost} = \frac{\text{Listed average annual operating cost}*}{} \times \frac{\text{Your cooling load hours}**}{1{,}000} \times \frac{\text{Your electrical rate in cents per KWH}}{8.41¢}$$

* * * * *

■ 5. In section 2 of Appendix I of Part 305, the text is amended by removing the figure ''8.28¢'' wherever it appears and by adding, in its place, the figure ''8.41¢''. In addition, the *Examples* and formulas are amended by removing the figure ''12.42¢'' wherever it appears and by adding, in its place, the figure ''12.62¢''.

■ 6. In section 2 of Appendix I of Part 305, the formula is revised to read as follows in both places that it appears:

Appendix I to Part 305—Heating Performance and Cost for Central Air Conditioners

* * * * *

$$\text{Your estimated cost} = \text{Listed annual heating cost}* \times \frac{\text{Your electrical cost in cents per KWH}}{8.41¢}$$

* * * * *

■ 7. Appendix L is amended by revising Sample Label 4 of part 305 to read as follows:

* * * * *

BILLING CODE 6750–01–P

Based on standard U.S. Government tests

ENERGYGUIDE

Dishwasher
Capacity: Standard

XYZ Corporation
Model(s) MR328, XI12, NAA83

Compare the Energy Use of this Dishwasher with Others Before You Buy.

This Model Uses
500kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy
222

Uses Most Energy
653

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size dishwashers are used in this scale.

Dishwashers using more energy cost more to operate. This model's estimated yearly operating cost is:

$42

When used with an electric water heater

$30

When used with a natural gas water heater

Based on five wash loads a week using the normal cycle and a 2003 U.S. Government national average cost of 8.41¢ per kWh for electricity and 81.6¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 4

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–20372 Filed 8–8–03; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 103

RIN 1515–AD29

[CBP Decision 03–02]

Confidentiality of Commercial Information

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends Chapter I of Title 19 of the Code of Federal Regulations on an interim basis regarding the disclosure procedures that the Bureau of Customs and Border Protection (CBP) follows when commercial information is provided to CBP by a business submitter. The predecessor of CBP—the U.S. Customs Service—as a component of the Treasury Department, had followed these procedures consistent with a Department of the Treasury regulation that implemented an Executive Order setting forth the procedure for the treatment of commercial information. As CBP is now a component of the Department of Homeland Security, CBP is setting forth this established policy in its own regulations.

DATES: This interim rule is effective August 11, 2003. Comments must be received on or before October 10, 2003.

ADDRESSES: Written comments may be addressed to the Customs and Border Protection Bureau, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at Customs and Border Protection Bureau, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Disclosure Law Branch, Office of Regulations and Rulings, (202) 572–8720.

SUPPLEMENTARY INFORMATION:

Background

The regulations of the Bureau of Customs and Border Protection (CBP), regarding information requested pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, are set forth in part 103 of Chapter I of Title 19 of the Code of Federal Regulations (19 CFR part 103). These regulations were the regulations of the former U.S. Customs Service (Customs). As a component of the Department of the Treasury, Customs supplemented its regulations with the Department of the Treasury regulations (found at 31 CFR part 1) regarding public access to records. Section 1.6 of the Department of the Treasury regulations (31 CFR 1.6) concerns the treatment of information denominated as ''business information''. This section provides that such information provided to the Department of the Treasury by a ''business submitter'' shall not be disclosed pursuant to a FOIA request except in accordance with the provisions of the section. Part 103 of 19 CFR does not have a similar provision and Customs followed the Department of the Treasury's disclosure procedure set forth in 31 CFR 1.6 since it was promulgated in 1987.

Section 1.6 was promulgated in accordance with Executive Order 12600 of June 23, 1987, 52 FR 23781, 3 CFR part 1987, 235, 23 Weekly Comp.Pres. Doc. 727. Executive Order 12600 ordered the head of each Executive department to issue a predisclosure notification procedure for FOIA requests concerning confidential commercial information.

On March 1, 2003, Customs was transferred from the Treasury Department to the new Department of Homeland Security (DHS). Pub. L. 107–296, 6 U.S.C. 133, 116 Stat. 2135. DHS published procedures for the public on how to obtain information from DHS in an interim rule published in the **Federal Register** (68 FR 4055) on January 27, 2003. Under this rule, established at 6 CFR, Chapter I, part 5, the DHS FOIA provisions apply to all Department components transferred to the DHS, except to the extent that such component has adopted separate guidance under the FOIA (6 CFR 5.1(a)(2)).

The DHS FOIA regulation at 6 CFR 5.8(c) provides that a submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under exemption 4 of the FOIA. (Exemption 4 of the FOIA protects trade secrets and commercial or financial information that is privileged or confidential.) The regulations go on to say that, before business information will be released, notice will be provided to business submitters whenever (1) a FOIA request is made that seeks the business information that has been designated in good-faith as confidential, or (2) the DHS component agency has reason to believe the information may be protected from disclosure. When notice is provided, the submitter will be required to submit a detailed written statement specifying the grounds for withholding any portion of the information and must show why the information is a trade secret or commercial or financial information that is privileged or confidential.

Customs, in accordance with the Treasury Regulations (31 CFR 1.6), had not required business submitters to designate information as protected from disclosure as privileged or confidential under exemption 4 of the FOIA for the agency to not disclose ''commercial information'', defined as trade secret, commercial, or financial information obtained from a person. The Treasury regulations provide that a component of the Treasury Department can determine for itself that information it receives from business submitters will not be disclosed pursuant to a FOIA request. If the agency determines the information is confidential, it can protect the information as confidential without notifying the business submitter that a FOIA request has been received.

For example, Customs routinely considered commercial information appearing on entry documents as confidential and privileged under exemption 4 of the FOIA. Customs did not require business submitters to designate that information as confidential and did not require the business submitters to respond to a notice from Customs with a written detailed statement specifying the reasons for the claim of confidentiality.

Accordingly, CBP is issuing this document to assure the trading community that the transfer of Customs from Treasury to DHS will not affect the treatment of commercial information which business submitters provide to CBP. In this document CBP is amending its regulations on an interim basis to set forth the established policy it had been following pursuant to the Treasury regulations.

Discussion of Interim Amendments Concerning the Disclosure of Commercial Information

CBP is adding a new § 103.35 to its regulations to set forth its policy under the FOIA for the disclosure of confidential commercial information. The text will provide that ''commercial information'', defined as ''trade secret, commercial, or financial information obtained from a person'', that has been provided to CBP by a business submitter will be considered privileged or confidential and will not be disclosed except as provided in the section. This section will explain the various notice requirements CBP must give to the business submitter whose commercial information is the subject of a FOIA request for information, the procedure a business submitter must follow to object to the proposed disclosure, the notice of intent to disclose provisions that CBP must follow when it decides to disclose requested commercial information, and exceptions to the notice requirements. There is no affirmative requirement of business submitters to designate information as privileged or confidential.

It is noted that the new section does allow for a business submitter to designate information as confidential in § 103.35(b)(1)(i). Business submitters may avail themselves of this option when such a designation is feasible, as when submitting a ruling request. However, in situations when there is no method by which to designate information as confidential, such as on entry documentation, it is CBP's position that the commercial information will not be disclosed as a matter of policy. See § 103.35(b)(2)(i).

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to CBP, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b) of the Title 19 of the Code of Federal Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection Bureau, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Inapplicability of Prior Notice and Delayed Effective Date Requirements

CBP has determined, pursuant to 5 U.S.C 553(b)(B), that it would be contrary to the public interest to issue this rule with prior notice because the rule sets forth an established treatment of commercial information and seeks to assure the trade community that such submissions will continue to be treated the same by CBP in the Department of Homeland Security as the information was treated when Customs was under the Department of the Treasury. For these reasons, and pursuant to 5 U.S.C. 553(d)(3), good cause exists to make this rule effective immediately without a 30-day delayed effective date. However, as previously stated, CBP invites comments before determining whether to adopt these interim regulations as a final rule.

The Regulatory Flexibility Act, and Executive Order 12866

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), do not apply. Further, this document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects in 19 CFR Part 103

Administrative practice and procedure, Confidential commercial information, Freedom of information, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons set forth above, CBP amends part 103 of Title 19 of the Code of Federal Regulations (19 CFR part 103), as set forth below:

PART 103—AVAILABILITY OF INFORMATION

■ 1. The general authority citation for part 103 continues, and a specific authority citation for § 103.35 is added, to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1431, 1624, 1628; 31 U.S.C. 9701.

* * * * *

Section 103.35 also issued under E.O. 12600 of June 23, 1987.

■ 2. Section 103.35 is added to subpart C to read as follows:

§ 103.35 Confidential commercial information; exempt.

(a) *In general.* For purposes of this section, ''commercial information'' is defined as trade secret, commercial, or financial information obtained from a person. Commercial information provided to CBP by a business submitter will be treated as privileged or confidential and will not be disclosed pursuant to a Freedom of Information Act (FOIA) request or otherwise made known in any manner except as provided in this section.

(b) *Notice to business submitters of FOIA requests for disclosure.* Except as provided in paragraph (b)(2) of this section, CBP will provide business submitters with prompt written notice of receipt of FOIA requests or appeals that encompass their commercial information. The written notice will describe either the exact nature of the commercial information requested, or enclose copies of the records or those portions of the records that contain the commercial information. The written notice also will advise the business submitter of its right to file a disclosure objection statement as provided under paragraph (c)(1) of this section. CBP will provide notice to business submitters of FOIA requests for the business submitter's commercial information for a period of not more than 10 years after the date the business submitter provides CBP with the information, unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(1) *When notice is required.* CBP will provide business submitters with notice of receipt of a FOIA request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially- or financially-sensitive information. The business submitter's claim of confidentiality should be supported by a statement by an authorized representative of the business entity providing specific justification that the information in question is considered confidential commercial or financial information and that the information has not been disclosed to the public; or

(ii) CBP has reason to believe that disclosure of the commercial information could reasonably be expected to cause substantial competitive harm.

(2) *When notice is not required.* The notice requirements of this section will not apply if:

(i) CBP determines that the commercial information will not be disclosed;

(ii) The commercial information has been lawfully published or otherwise made available to the public; or

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Procedure when notice given.*—(1) *Opportunity for business submitter to object to disclosure.* A business submitter receiving written notice from CBP of receipt of a FOIA request or appeal encompassing its commercial information may object to any disclosure of the commercial information by providing CBP with a detailed statement of reasons within 10 days of the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays). The statement should specify all the grounds for withholding any of the commercial information under any exemption of the FOIA and, in the case of Exemption 4, should demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. The disclosure objection information provided by a person pursuant to this paragraph may be subject to disclosure under the FOIA.

(2) *Notice to FOIA requester.* When notice is given to a business submitter under paragraph (b)(1) of this section, notice will also be given to the FOIA requester that the business submitter has been given an opportunity to object to any disclosure of the requested commercial information. The requester will be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. The notice will also invite the FOIA requester to agree to a voluntary extension(s) of time so that CBP may review the business submitter's disclosure objection statement.

(d) *Notice of intent to disclose.* CBP will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever CBP decides to disclose the requested commercial information over the objection of the business submitter, CBP will provide written notice to the business submitter of CBP's intent to disclose, which will include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the commercial information to be disclosed; and,

(3) A specified disclosure date which will not be less than 10 days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of intent to disclose the requested information has been issued to the business submitter. Except as otherwise prohibited by law, CBP will also provide a copy of the notice of intent to disclose to the FOIA requester at the same time.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel the disclosure of commercial information covered by paragraph (b)(1) of this section, CBP will promptly notify the business submitter in writing.

Dated: June 20, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–20328 Filed 8–8–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 111

[CBP Dec. 03–15]

RIN 1515–AD14

Performance of Customs Business by Parent and Subsidiary Corporations

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to Customs Regulations to provide that corporate compliance activity engaged in by related business entities for the purpose of exercising ''reasonable care'' is not customs business and therefore is not subject to the customs broker licensing requirements. The amendments make clear that this corporate compliance activity concept does not extend to document preparation and filing, which is customs business subject to licensing requirements. The amendments will improve the operational efficiency of the affected business entities and, thereby, enhance their ability to ensure compliance with applicable customs laws and regulations.

EFFECTIVE DATE: Final rule effective September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Gina Grier, Office of Regulations and Rulings (202–572–8730).

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties, and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 also provides for the issuance of rules and regulations relating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

The regulations issued under the authority of section 641 are set forth in part 111 of the Customs Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Part 111 also prescribes recordkeeping and other duties and responsibilities of brokers, sets forth in detail the grounds and procedures for the revocation or suspension of broker licenses and permits and for the assessment of monetary penalties, and sets forth fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

Section 111.1 of the Customs Regulations (19 CFR 111.1) sets forth definitions that apply for purposes of part 111 and includes the following definition of ''customs business:''

> ''Customs business'' means those activities involving transactions with Customs concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by Customs on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. ''Customs business'' also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with Customs in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, ''customs business'' does not include the mere electronic transmission of data received for transmission to Customs.

Section 111.2 of the Customs Regulations (19 CFR 111.2) sets forth the basic rules regarding when a person (that is, an individual, partnership, association, or corporation) must obtain a customs broker license and permit. Paragraph (a)(2) of § 111.2 specifies several exceptions to the license requirement including, in subparagraph (i), an exception for an importer or

exporter (and his authorized regular employees or officers acting only for him) transacting customs business solely on his own account and in no sense on behalf of another. Section 111.4 of the Customs Regulations (19 CFR 111.4) provides that any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid broker's license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of section 641.

The scope of ''customs business'' and the broker licensing requirement took on added importance as a result of the amendments made in 1993 by the Customs Modernization Act (the Mod Act) provisions of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057). Those Mod Act amendments included a revision of section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) to, among other things, add a requirement that an importer of record exercise ''reasonable care'' in connection with the entry requirements under that section. In order to foster compliance with the customs laws and regulations under this added statutory responsibility, many importer groups consisting of a parent corporation and one or more subsidiary corporations chose to centralize their in-house customs experts into one corporate entity and to make the services of those experts available to the group as a whole.

However, when requested to issue an administrative ruling on the issue, the U.S. Customs Service (Customs, the predecessor agency to the current Bureau of Customs and Border Protection, referred to hereafter in this document as CBP) consistently took the position that many of the activities performed under this type of arrangement would involve the transaction of ''customs business,'' which would require a broker license under § 111.2(a)(1). This conclusion was based on the reasoning that (1) the parent corporation and each subsidiary corporation is a separate legal ''person,'' and (2) therefore, the parent or subsidiary corporation in which the customs expertise resides would be transacting customs business not solely on its own account as provided under § 111.2(a)(2)(i) but rather on behalf of another ''person.''

Members of the trade community on a number of occasions had indicated to Customs that the result reached in the administrative rulings described above was unsatisfactory because it did not afford importers sufficient opportunity to address multiple related aspects of an individual customs transaction or groups of transactions. They believed that this was an impediment to their ensuring that reasonable care is exercised by all corporate affiliates for purposes of 19 U.S.C. 1484.

In response to the concerns expressed by the trade, Customs on October 15, 2002, published in the **Federal Register** (67 FR 63576) a notice setting forth proposed amendments to the Customs Regulations that would expand the permissible use of in-house experts by corporations and their affiliates to include activity that is intended to meet the corporation's ''reasonable care'' obligations under 19 U.S.C. 1484 and that would not fall within the definition of ''customs business'' in 19 U.S.C. 1641. The proposed amendments involved the addition of a new § 111.1 definition for the term ''corporate compliance activity'' to describe the permissible activities (and with a specific exclusion for document preparation and filing); the addition of language at the end of the existing § 111.1 definition of ''customs business'' stating that it does not include a corporate compliance activity; and the addition of a new paragraph (a)(2)(vii) to § 111.2 to clarify that a company performing a corporate compliance activity is not required to be licensed as a broker.

The October 15, 2002, notice invited the submission of public comments on the proposed regulatory changes, and the public comment period closed on December 16, 2002. A total of 28 commenters responded to the solicitation of comments in the notice. The comments submitted are summarized and responded to below.

Discussion of Comments

Comment: The proposed amendments will benefit the importing community for several different reasons. For example, divisions and sister subsidiaries will be better able to meet the standards of reasonable care. Similarly, subsidiaries will be able to better leverage and benchmark best practices from within the parent company and subsidiaries, thereby improving the compliance activities of the entire corporation. Under the proposed rule, centralized corporate or affiliate groups can be more flexible in their ability to hire qualified people to provide common expertise for subsidiary companies that small divisions may not be able to afford or justify by themselves. The commenter provided a number of other examples of the beneficial aspects of this proposed rule.

Response: CBP agrees in principle with the general nature of these comments which reflect the purpose behind the regulatory proposal.

Comment: The goal of this proposal, which is to enable related companies to engage in corporate compliance activity on behalf of one another, could best be achieved through the modification or revocation of the rulings which created the controversy in the first place.

Response: CBP considered but rejected that option because a modification or revocation of those rulings might give rise to a false premise, that is, that the rulings were not legally correct when they were originally issued. To the extent that the rulings in question are inconsistent with the Part 111 texts as amended by this final rule document, those rulings will be considered to be modified or revoked without further action on the part of CBP—see § 177.12(d)(1)(vi) of the Customs Regulations (19 CFR 177.12(d)(1)(vi)) which was adopted in T.D. 02–49, published in the **Federal Register** (67 FR 53483) on August 16, 2002.

Comment: The proposed new definition of ''corporate compliance activity'' in § 111.1 is imprecise and will only create confusion. By seeming to allow all activities that do not involve the preparation or filing of documents, the proposed amendment raises concerns that other inter-corporate activities set forth in the definition of ''customs business'' will be allowed.

Response: CBP does not agree that the definition is imprecise and will create confusion. The commenter has correctly understood the effect of the proposed regulatory amendment, that is, that related companies will be permitted to conduct any activities mentioned in the definition of ''customs business,'' other than the actual preparation and filing of documents, so long as those activities fall within the definition of ''corporate compliance activity.''

Comment: It is improper for CBP to include corporate compliance activities in 19 CFR 111.2(a)(2) as an exception to the requirement that a license is required, since it has already been made clear that these activities do not fall within the definition of ''customs business.''

Response: On further consideration of this matter, CBP agrees with the point made by this commenter, because the definition of ''customs business'' in 19 CFR 111.1 is being amended specifically to exclude corporate compliance activity from customs business, making an exception to the license requirement redundant. Accordingly, the regulatory changes adopted in this final rule

document do not include the addition of proposed new paragraph (a)(2)(vii) to § 111.2.

Comment: CBP needs to narrow the definition of ''customs business'' and broaden the definition of ''corporate compliance activity.'' Specifically, the latter definition should not exclude document preparation and filing.

Response: Document preparation is specifically mentioned as one of the activities falling within the statutory and regulatory meaning of ''customs business.'' The filing with CBP of those prepared documents is the logical next step and involves direct representations to the Government agency responsible for administering the matters to which those documents pertain. These considerations formed the basis for excluding document preparation and filing from the definition of ''corporate compliance activity.'' In defining ''corporate compliance activity,'' CBP endeavored to strike a balance between an importer's obligation to exercise reasonable care and the licensing requirements of 19 U.S.C. 1641. This balance is achieved by allowing related companies to provide advice while at the same time precluding them from preparing and filing documentation.

Comment: The prohibition against document preparation and filing should be lifted if steps are taken to ensure that the importer of record remains liable.

Response: By focusing on the liability of the importer of record, this comment appears to misconstrue CBP's primary focus in this matter, which was the customs broker statute and regulations. The exception regarding document preparation and filing by a related company was included in the definition of ''corporate compliance activity'' only in recognition of the explicit terms of 19 U.S.C. 1641 and not in order to suggest that an importer of record's liability would cease if the documents were prepared and filed by a related company. The legal obligations of importers of record, whether contractual under their bonds or otherwise imposed by other statutes or regulations, will remain undisturbed by this amendment to the customs broker regulations.

Comment: The regulations pertaining to ''corporate compliance activity'' should restrict document preparation and filing to those entry documents that are required to be filed under 19 U.S.C. 1484.

Response: CBP disagrees, because the document preparation and filing aspect of ''customs business'' extends to preparation and filing activities performed after the filing of the entry and entry summary. This rule is reflected in 19 CFR 111.2(b)(2)(i)(D), which provides that a broker who did not file the entry, but who is appointed by the importer of record to make written or oral representations to CBP after entry summary acceptance, must have a national permit if the broker does not have a district permit where the representations will be made.

Comment: While the proposed amendment will be beneficial both to the industry and to CBP, it does not make clear whether related parties can assist each other in responding to Customs Form 28 Requests for Information or Customs Form 29 Notices of Action, or in preparing or filing Post Entry Amendments, Supplementary Information Letters, documents relating to compliance audits or assessments, or certificates of origin.

Response: The prohibition against preparing and filing documents under the broker statute and regulations applies not just to the entry and entry summary, but to all other documents for which preparation and filing constitutes ''customs business'' or for which no explicit allowance is made by statute or regulation for preparation or filing by an ''authorized agent.'' Examples of documents for which there is an explicit allowance for action by an authorized agent are protests, ruling requests, and certain drawback documents. Since the proposed definition of ''corporate compliance activity'' contained no limitation or exception regarding the scope of document preparation and filing, the prohibition would apply to those specific examples mentioned by this commenter to the extent that they involve a customs business activity. However, a determination on whether a specific action constitutes a customs business activity can only be made on a case-by-case basis, for example through the binding ruling process.

Comment: Certain activities should be specifically authorized in the regulatory text (for example, classifying and valuing goods, providing advice on origin marking requirements, providing training to related companies, preparing responses to marking and penalty notices and prior disclosures, and representing companies before CBP in an audit). Alternatively, the definition of ''corporate compliance activity'' should be amended to include offering specific advice on the classification, valuation, or admissibility of merchandise.

Response: CBP does not believe that it would be advisable to include specific authorized activities within the regulations, because it would be impractical to list every conceivable activity that related companies may perform for each other. Listing some but not others would potentially create confusion or uncertainty as regards activities not listed. Some of the responses to comments in this final rule document may provide guidance on which activities are or are not permissible. For example, it has already been explained above that advisory activities will be allowed, while written communications with Customs in most circumstances would not be permitted. Importers with questions on a particular activity may request that the matter be resolved through the binding ruling process.

Comment: It is common for corporations to establish subsidiaries that have their own boards of directors and officers, but no employees. An example would be a sales or procurement subsidiary. In such cases, the parent may be preparing the subsidiary's documentation. The proposed regulations, with their restrictions on document preparation, are problematic in this regard.

Response: The preparation of documents under the corporate organizational scenario described by this commenter would constitute the performance of customs business in violation of the broker statute. Adoption of the proposed regulatory amendments would not alter that fact. The purpose of this rulemaking initiative is to facilitate the exercise of reasonable care, not to facilitate circumvention of the statutory obligation to seek the assistance of a licensed broker when a company, for its own business reasons, chooses not to have employees who can prepare and file documents with CBP.

Comment: CBP needs to further define what constitutes ''preparation'' within the context of a corporate compliance activity. Does the gathering and organization of information fall within the definition? Does it include the preparation of background documentation whose contents will be reflected on the entry?

Response: The proposed definition of ''corporate compliance activity,'' which precludes the ''actual preparation or filing of the documents or their electronic equivalents,'' in effect addresses the issue raised in this comment. The word ''actual'' is intended to emphasize that the documents in question are those that will be filed with CBP. Therefore, any work performed in anticipation of document preparation, including the gathering and organizing of information and its recordation on background paperwork, will be allowed under this provision.

Comment: It is unclear whether employees of a corporate compliance office will be able to discuss with CBP issues concerning a related company's import transactions.

Response: Discussions with CBP regarding import transactions may amount to the transaction of customs business given that the statutory definition of ''customs business'' includes ''those activities involving transactions with the Customs Service * * *'' However, CBP recognizes that preventing communication between corporate compliance offices and CBP would frustrate the primary purpose of such an office, that is, to provide accurate advice to the related company. In another example of making an accommodation between broker licensing and reasonable care requirements, CBP has determined that representatives of corporate compliance offices may communicate directly with CBP on behalf of related companies regarding the activities performed by the corporate compliance office to ensure that reasonable care was used in connection with preparation and filing of Customs documents. However, they should be prepared to demonstrate their authority to represent the interests of the related companies by presentation of a power of attorney or other letter of authorization.

Comment: It is unclear whether there would be a violation of the proposed rule if a corporate compliance office were to supply specific tariff information in writing to a related company. This needs to be clarified, as do questions arising over whether related companies can file ruling requests or protests on behalf of each other.

Response: No violation would occur if the compliance office were simply supplying the specific tariff information to the related company. The related company importer could then use the information to fill out the documentation to be filed with CBP, or turn it over to a broker for that purpose. On the issue of ruling requests and protests, 19 CFR 177.1(c) and 19 CFR 174.12(a)(6), respectively, permit an ''authorized agent'' to file those documents.

Comment: Please explain why companies that employ in-house customs brokers cannot provide advice, or prepare and file documents, on behalf of related companies. Such centralization would help to achieve high compliance rates.

Response: The broker statute makes provision for various types of broker's licenses: individual, corporate, association, or partnership. While the mere providing of advice to a related company may present no problem, if a corporation wishes to transact customs business (for example, prepare and file documents) for others, it must obtain a corporate license of its own. This requirement does not disappear simply because the corporation has a person on its payroll who is individually licensed, because the employee's licensed status does not confer a similar status on the employer. Furthermore, the actions of the employee performed during the regular course of his employment will be attributed to his employer, not to him individually. An analogy may be drawn to the situation in which an insurance company hires an attorney to work in its policy underwriting department: the employment of the attorney does not entitle the insurance company to practice law.

Comment: Most corporations with centralized customs compliance functions have put into place standard operating procedures (''SOPs'') for responding to CBP inquiries, submitting documents to CBP, and working with their various customs brokers. If CBP takes a strict approach to what constitutes the actual preparation and filing of documents, corporations will be forced to redesign their SOPs to limit their compliance activities. Such changes would probably include a restructuring of the corporation's relationship with its customs brokers to ensure that in-house customs compliance personnel only provide information to customs brokers and, perhaps, review any documents to be filed with CBP. Restricting the in-house compliance activities in this manner does not advance the policy goal of fostering reasonable care under the Mod Act.

Response: A reference to document ''preparation'' was added to the definition of ''customs business'' in the broker statute by section 648 of the Mod Act, and this statutory change has been in effect since December 8, 1993. The proposed regulatory changes at issue here did not attempt to impose a change in the meaning of document preparation. Moreover, as already pointed out in this comment discussion, the reference to ''actual'' preparation in the proposed regulatory text was intended to clarify that permissible corporate compliance activities include activities leading up to, but not in fact directly involving, document preparation. Therefore, to the extent that a corporation has been in compliance with the statutory standard since the adoption of the Mod Act amendment in 1993, the proposed regulatory amendments would not require any change in the corporation's SOPs as regards compliance activities.

Although the Mod Act amended 19 U.S.C. 1484 by imposing a reasonable care responsibility on importers of record, it did not eliminate or modify the requirement in 19 U.S.C. 1641 that a person have a broker's license to conduct customs business on behalf of others. The Mod Act also made no changes to the identity of the persons who, pursuant to 19 U.S.C. 1484, have the right to make entry. Those persons are the owner or purchaser of the imported merchandise, or a licensed broker who has been appointed by the owner, purchaser or consignee. Consequently, CBP in defining ''corporate compliance activity'' had to take into account the requirements of the broker and entry statutes. By proposing the addition of an explicit provision allowing related companies to have centralized compliance departments whose role would be advisory in nature, CBP attempted to strike a balance between an importer's reasonable care obligations and the proscription regarding the performance of customs business on behalf of others without a broker's license. It is the position of CBP that the proposed amendments are not restrictive in their effect and that they will foster compliance with importers' reasonable care obligations.

Comment: The development of the Automated Commercial Environment (ACE), and the possibility that future entries will be filed over the Internet, provides the perfect opportunity for CBP to look at changing practices. ACE will allow all parties to a customs transaction the ability to input information about the transaction. It is out of step for CBP to restrict these activities to independent customs brokers.

Response: The proposed regulations would enhance, not restrict, the ability of related companies (including those that have in-house brokers) to engage in certain activities that previously under the broker regulations were restricted to importers or their appointed brokers. The liberalization in the proposed regulatory changes had to stop at document preparation and filing in order to ensure the most appropriate balance between reasonable care obligations and the terms of the broker statute.

Comment: CBP has recognized that the effectiveness of its new security measures (for example, C-TPAT, Account Management, Importer Self-Assessment) are enhanced by corporate centralization of customs functions, yet the proposed rule limits the ability of

companies to effectively centralize import operations.

Response: As stated throughout this comment discussion, both CBP and importers must operate within the confines of existing law. In this case due regard must be given to the entry and broker provisions of 19 U.S.C. 1484 and 1641. CBP believes that the proposed regulatory changes will enhance, rather than limit, the ability of related companies to centralize their import operations. To the extent that the proposed amendments may not go as far as the commenter would like, that is a function of the limits imposed by the statutory provisions in question.

Comment: As an alternative to the suggested changes, the definition of ''person'' in 19 CFR 111.1 could be changed so that the parenthetical phrase ''(including subsidiaries and sister companies)'' is added after the word ''corporation.'' With a definition such as this, corporations could conduct the same activities for subsidiaries as they do for themselves.

Response: CBP examined but rejected this approach when drafting the proposed regulations. Altering the definition of ''person'' in such a manner that subsidiaries are considered to be the same person as their parent would have consequences that go beyond the corporate compliance issue at hand. This is because the new definition will apply to everything that takes place under part 111 of the Customs Regulations, not just to corporate compliance activities. Since a person must obtain a license to conduct customs business as a broker, questions would inevitably arise whenever a parent or subsidiary corporation applied for a license. For example, would a license granted to a parent also cover its subsidiaries, since by definition they would be one and the same person? Or would a subsidiary even have the right to apply for a license in its own name, given that its identity had been subsumed into that of the parent? Furthermore, the legal separation between parent and subsidiary corporations is recognized elsewhere in the Customs Regulations, and thus the elimination of that separation from the broker regulations would not only create a legal inconsistency but would also have the potential to create confusion in other regulatory contexts.

Comment: A better approach would be to change the definition of ''for one's own account'' to clearly encompass the transaction of customs business on behalf of subsidiary companies. In this manner, the definition of ''customs business'' could remain unchanged, and it would be unnecessary to carve out limited exceptions when interpreting the definition.

Response: CBP also considered this option when formulating the regulatory proposals. However, for essentially the same reasons stated in the preceding comment response for not changing the definition of a ''person,'' CBP decided not to adopt this approach.

Comment: The proposed rule does not clarify the distinction between the assigning of a Harmonized Tariff Schedule number to inbound items for entry submission to CBP and the review of internal classification databases. The former is a part of the entry process, and is thus customs business, while the latter is merely a corporate compliance activity.

Response: While CBP agrees that the tariff classification of items to be entered may constitute a customs business activity depending on the context in which it is done, this regulatory initiative also recognizes that some accommodation must be made to enable companies to meet their reasonable care obligations. To this end, the proposed regulations would allow a compliance department to provide tariff classification advice to a sister or parent entity for all purposes, including advice regarding the assigning of tariff numbers for placement on an entry. However, that compliance department may not prepare the actual entry document.

Comment: The proposed definitions of eligible related parties are clear and do not create any particular problems.

Response: CBP agrees that the definitions are clear. However, as indicated later in this comment discussion, some adjustments to the proposed text are made in this final rule document in response to concerns raised in other comments.

Comment: CBP should replace the proposed related party definition with the related party standard employed for customs valuation purposes. One commenter specifically suggested that CBP should resort to the more limited related party definition as expressed in 19 U.S.C. 1401a(g)(1)(G).

Response: CBP believes that the related party definition used generally for valuation purposes is too broad for application in the context under review here. For example, the valuation definition includes relationships between family members. Its wholesale adoption would thus be inappropriate.

The narrower suggestion, that CBP use the more limited related party definition as set forth in 19 U.S.C. 1401a(g)(1)(G), is also unacceptable. That provision confers a relationship on ''[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person.'' According to a notice entitled ''Transfer Pricing; Related Party Transactions'' published in the **Federal Register** (58 FR 5445) on January 21, 1993, determinations of ''control'' must be made on a case by case basis within the context of the administrative review procedures available to the importing public under parts 174 and 177 of the Customs Regulations. The adoption of a definition that requires the issuance of a protest review decision or a ruling to determine if a party qualifies would be difficult to administer, and, as such, would not be appropriate in the present regulatory context.

Comment: As an alternative to the 50 percent ownership requirement, the rule should allow ownership of some equity or voting shares coupled with proof of the retention of substantive management rights, such as the right to designate officers or directors. Such a standard would take into account modern forms of corporate organization while also assuring that only those entities exerting control were engaged in permissible compliance activity.

Response: Receiving accurate information from importers is crucial to CBP's mission. The agency fosters accuracy through the issuance of informed compliance publications and binding rulings and by offering outreach programs to the importing community. It also makes use of the procedures that enable it to seek redress against persons who file inaccurate or incomplete entry documentation. Among its options in this regard, CBP can assess liquidated damages against an importer of record for a breach of the basic importation bond, or discipline licensed brokers pursuant to 19 U.S.C. 1641. Corporate compliance offices under this new regulatory scheme will not be subject to similar actions by CBP, because they will not be importers of record or, in most cases, licensed brokers. Absent some assurance of accountability, CBP would be reluctant to allow an unlicensed third party to participate in the entry process, because the accuracy of the information generated by that third party may be questionable. CBP, in imposing a substantial ownership standard (that is, more than 50 percent of the voting shares), seeks to establish what might be best described as cascading accountability by ensuring that entities offering compliance services are accountable to importers who are, in turn, accountable to CBP. Accordingly, the proposed standard is retained in the final rule. With regard to the point concerning modern forms of corporate organization, see the response to the next comment, which also

discusses the replacement of the reference to ''voting shares.''

Comment: The proposed definition of related parties only refers to voting shares of corporations and does not address other voting interests such as joint ventures, partnerships, limited partnerships, limited liability companies, or any other legal structure now or hereafter existing. Such situations should be considered, and all possible business entities should be addressed, by the regulations.

Response: Even though CBP believes that the 50 percent ownership standard should be retained as stated above, CBP also recognizes that in today's business environment relationships may be forged between companies that fall outside of the traditional corporate parent/subsidiary structure. Accordingly, in the regulatory text adopted in this final rule document, references to parent, subsidiary, and sister corporations are replaced with the more generic terms ''business entity'' and ''related business entity or entities,'' with ''business entity'' defined as ''an entity that is registered or otherwise on record with an appropriate governmental authority for business licensing, taxation, or other legal purposes.'' In addition, because voting shares are not the exclusive basis for determining the ownership level in a business, the references to ''more than 50 percent of the voting shares'' have been replaced in the final regulatory text with more general references to ''more than a 50 percent ownership interest.''

Comment: CBP should adopt a regulation to allow those entities transacting customs business on behalf of related affiliates to certify to CBP, upon request, that the entity exercises ''responsible supervision and control'' over the affiliate's customs activity.

Response: CBP is uncertain as to the purpose behind this suggestion. The exercise of responsible supervision and control is a concept that applies to licensed customs brokers, upon whom that duty falls whenever they engage in customs brokerage activities. A broker can be sanctioned by CBP for failing to exercise responsible supervision and control. Since compliance departments will not be required to have broker licenses in cases covered by this new regulatory provision, the suggestion of this commenter does not appear to be relevant to the present exercise. For this reason, CBP declines to adopt the suggested certification procedure.

Conclusion

Based on the comments received and the analysis of those comments as set forth above, CBP believes that the proposed regulatory amendments should be adopted as a final rule with the changes discussed above.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. CBP believes that the amendments will have only a minimal impact on overall customs broker operations because they do not authorize the preparation of documents and the filing of documents with CBP, which constitute the bulk of customs business services provided by brokers. CBP also believes that the amendments will provide positive economic and related benefits to other members of the import community. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons stated in the preamble, part 111 of the Customs Regulations (19 CFR part 111) is amended as set forth below.

PART 111—CUSTOMS BROKERS

■ 1. The general authority citation for Part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

■ 2. In § 111.1:

■ a. The definition of ''customs business'' is amended by adding at the end of the last sentence before the period the words ''and does not include a corporate compliance activity''; and

■ b. A new definition of ''corporate compliance activity'' is added in appropriate alphabetical order to read as follows:

§ 111.1 Definitions.

* * * * *

Corporate compliance activity. ''Corporate compliance activity'' means activity performed by a business entity to ensure that documents for a related business entity or entities are prepared and filed with Customs using ''reasonable care'', but such activity does not extend to the actual preparation or filing of the documents or their electronic equivalents. For purposes of this definition, a ''business entity'' is an entity that is registered or otherwise on record with an appropriate governmental authority for business licensing, taxation, or other legal purposes, and the term ''related business entity or entities'' encompasses a business entity that has more than a 50 percent ownership interest in another business entity, a business entity in which another business entity has more than a 50 percent ownership interest, and two or more business entities in which the same business entity has more than a 50 percent ownership interest.

* * * * *

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–20327 Filed 8–8–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4439]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act

AGENCY: Department of State

ACTION: Final rule.

SUMMARY: The Department is amending its regulations to add two new nonimmigrant symbols to the nonimmigrant classification table. The amendments are necessary to implement recently enacted legislation. On November 2, 2002, the President signed into law the ''Border Commuter Student Act of 2002''. This legislation creates two new nonimmigrant visa classifications (F3 and M3) for citizens and residents of Mexico or Canada who seek to commute into the United States for the purpose of attending an approved F or M school. This rule adds these new classifications to the

Department's regulatory list of nonimmigrant visa classifications.

DATES: Effective date: This rule takes effect August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0106, 202–663–1206.

SUPPLEMENTARY INFORMATION:

What Is the Background for These New Visa Classifications?

Prior to the September 11 terrorist attacks on the United States, Canadian and Mexican citizens living in their home countries, but traveling back and forth across the border to take part-time classes in the United States were admitted into the country as visitors. However, due to security concerns in the aftermath of the attacks, the Immigration and Naturalization Service (INS), now the Department of Homeland Security (DHS), stopped admitting these part-time students as DHS held that they were not eligible for admittance to the United States as visitors, since their purpose was to attend class. They also were not eligible for either F1 (academic) or M1 (non-academic or vocational) visas because these classifications require students to attend class on a full-time basis.

The ''Border Commuter Student Act of 2002'', Public Law 107–274, creates new visa classifications for Canadian and Mexican citizens and residents who seek to commute to the United States for the purpose of full-time or part-time study at a DHS-approved school. These students (classified F3 and M3) are permitted to study on either a full-time or part-time basis. The family members of border commuter students are not entitled to derivative F2 or M2 status.

How Is the Department Amending Its Regulations?

The rule amends the nonimmigrant visa classification table at 22 CFR 41.12 by adding new classifications: F3 and M3.

Regulatory Analysis and Notices

Administrative Procedure Act

The implementation of this rule as a final rule is based upon the ''good cause'' exceptions established by 5 U.S.C. 553(b)(B) and 553(d)(3). The Department has determined that since the new nonimmigrant classifications became effective upon enactment of the Border CommuterStudent Act of 2002 and since there is substantial immediate benefit to many aliens, there is not sufficient reason to delay its implementation. Additionally, this rule does not make changes in current policy with respect to the admission of border commuter students, but provides for a proper classification for such students. The Department has determined that adherence to the notice and comment period normally required under 5 U.C. 553(b) would cause disruption in the studies of these students.

Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Department of State hereby certifies that it is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of ExecutiveOrder 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

PART 41—[AMENDED]

■ 1. The authority citation for Part 41 continues to read as follows:8 U.S.C. 1104, Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801.

■ 2. Amend the table in § 41.12 by adding new categories F3 and M3 in alpha-numeric order to read as follows:

§ 41.12 Classification symbols.

* * * * *

NONIMMIGRANTS

Symbol	Class	Section of law
*	*	*
F–3	Canadian or Mexican national commuter student	101(a)(15)(F)(iii).
*	*	*
M–3	Canadian or Mexican national commuter student (Vocational student or other nonacademic student) ...	101(a)(15)(M)(iii).

NONIMMIGRANTS—Continued

Symbol	Class	Section of law
* * * * * * *		

Dated: July 22, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–20390 Filed 8–8–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–131]

RIN 1625–AA09

Drawbridge Operation Regulations; St. Johns River, Mile 24.7 at Jacksonville, Duval County, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the operation of the Main Street Bridge, mile 24.7, Jacksonville, Florida. Under this temporary rule, the bridge need not open from 8 p.m. to 6 a.m., August 18, 2003 until October 30, 2003. This temporary rule is required to allow the bridge owner to provide for worker safety while completing repairs to the bridge. Due to the repair work, the vertical clearance of the bridge will be reduced by 5 feet.

DATES: This rule is effective from 8 p.m., August 18, 2003, until 6 a.m., October 30, 2003. Comments must be received by September 19, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–03–131 and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

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 (CGD07–03–131), 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 they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received. The Coast Guard may amend this temporary final rule based on comments received.

Regulatory Information

We did not publish a notice of proposed rulemaking (NRPM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM was impracticable and contrary to the public interest, because the rule was needed to allow the contractor to provide for worker safety while repairing the bridge. The repair work is required before the winter season when there will be increased boating and vehicular traffic in the area. Also, since the temporary rule provides for bridge openings during the majority of the day, during daytime hours when the area is most heavily traveled, vessel traffic will not be unduly disrupted during the repair process.

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 **Federal Register** publication. Though the contractor submitted a letter on May 29, 2003, requesting a change to the bridge's operating schedule to effect repairs, that request was incorrectly addressed and did not reach the Bridge Branch until faxed there on July 7, 2003. The repair work to the bridge needs to be done before the busy winter season. Accordingly, there was insufficient time remaining to either publish an NPRM or delay the effective date of the rule. This temporary rule provides for a reduction in bridge openings so as to allow the contractor to safely repair the bridge while providing for the reasonable needs of navigation.

Background and Purpose

The Main Street Bridge, mile 24.7 at Jacksonville, Duval County, Florida, has a vertical clearance of 40 feet at mean high water and a horizontal clearance of 350 feet between the fender systems. The existing operating regulations in 33 CFR 117.325 require the bridge to open on signal except that, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m., Monday through Saturday, except Federal holidays, the draw need not open for the passage of vessels. The draw opens at any time for vessels in an emergency involving life or property.

Royal Bridge, Inc., contractors notified the Coast Guard on July 7, 2003, that work on the vertical lift is scheduled from August 18, 2003, to October 30, 2003. For safety reasons, there will be a 5-foot reduction in vertical clearance. The contractors request that the bridge not open from 8 p.m. until 6 a.m. during the repair period. This temporary rule is necessary to provide for worker safety during repairs to the bridge and does not significantly hinder navigation, as openings will be provided throughout the remainder of the day.

Discussion of Rule

Under this temporary rule, the bridge need not open from 8 p.m. until 6 a.m., August 18, 2003, to October 3, 2003. There will also be a reduction in vertical clearance of 5 feet. This action is necessary for worker safety during repairs to the bridge and does not significantly hinder navigation.

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 Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The temporary rule will impact vessels of greater than 35 feet in height because of the reduction in vertical clearance. The

temporary rule, however, will only affect a small percentage of vessel traffic through the bridge, because it is not yet the winter season when there would be substantially greater use of the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this temporary 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 temporary rule would not have a significant economic impact on a substantial number of small entities, because the regulations will affect only a limited amount of marine traffic and will still provide for navigation needs by opening on signal from 6:01 a.m. to 7:59 p.m.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this temporary 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 temporary rule so that they can better evaluate its effects on them and comment if necessary. If this temporary 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 **FOR FURTHER INFORMATION CONTACT**.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 8 p.m. on August 18, 2003, until 6 a.m. on October 30, 2003, in § 117.325, paragraph (a) is suspended and a new paragraph (d), is added to read as follows:

§ 117.325 St. Johns River.

* * * * *

(d) The draw of the Main Street (US17) Bridge, mile 24.7 at Jacksonville,

shall open on signal, except that from 8 p.m. until 6 a.m., the draw need not open for the passage of vessels. The draw shall open at any time for vessels in an emergency involving life or property.

Dated: July 28, 2003.

F.M. Rosa,

Captain, Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 03–20334 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–253]

RIN 1625–AA00

Safety Zone; Red Bull Flugtag, Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Red Bull Flugtag Chicago. The safety zone is necessary to protect participants and spectators during the event. This safety zone is intended to restrict vessels from a portion of Lake Michigan.

DATES: This rule is effective from 9:30 a.m. (local) until 7 p.m. (local) on August 9, 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 [CGD09–03–253] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60527, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. 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 permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of participants and spectators from the hazards associated with launching human powered flying machines. All persons and vessels shall comply with the directions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Chicago or his designated on-scene representative and may be reached via VHF radio channel 16.

Discussion of Rule

The safety zone will encompass all waters and adjacent shoreline of Lake Michigan beginning at a point of 41°52′56″N, 087°36′55″ W; then south to 41°52′54″ N, 087°36′55″ W; then east to 41°52′54″ N, 087°36′48″ W; then west to 41°52′56″ N, 087°36′48″ W. These coordinates are based upon North American Datum 1983 (NAD 1983).

Regulatory Evaluation

This temporary 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. 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 Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

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

The Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C.601–612) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effectiveness 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, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications under that Order.

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive

Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Environment

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITITED ACCESS AREAS.

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new § 165.T09–253 is added to read as follows:

§ 165.T09–253 Safety Zone; Lake Michigan, Chicago, IL.

(a) *Location.* The following is a safety zone: all waters and adjacent shoreline of Lake Michigan beginning at a point of 41°52′56″ N, 087°36′556″ W; then south to 41°52′54″ N, 087°36′55″ W; then east 41°52′54″ N, 087°36′48″ W; then west to 41°52′56″ N, 087°36′48″ W; then back to the point of origin (NAD 83).

(b) *Enforcement period.* This section will be enforced from 9:30 a.m. (local) until 7 p.m. (local) on August 9, 2003.

(c) *Regulations.* In accordance with § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated on scene representative. Section 165.23 also contains other general requirements.

Dated: July 28, 2003.

Terrence W. Carter,

Captain, Coast Guard, Captain of the Port Chicago.

[FR Doc. 03–20331 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–248]

RIN 1625–AA00

Safety Zone; Captain of the Port Chicago Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays and other significant marine events in the Captain of the Port Chicago Zone during August 2003. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Chicago Zone.

DATES: Effective from 12:01 a.m. (Local) on August 1, 2003 to 11:59 p.m. (Local) on August 31, 2003.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, IL at (630) 986–2155.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent safety zones in 33 CFR 165.918(a)(13), (a)(8), (a)(10), and (a)(12) (68 FR 27466, May 20, 2003), for fireworks displays and other significant marine events in the Captain of the Port Chicago Zone during August 2003. The following safety zones are in effect for fireworks displays and other significant marine events occurring in the month of August 2003:

Navy Pier Summer Fireworks, Lake Michigan, Chicago, IL. This safety zone will be enforced every Wednesday and Saturday evening from 9 p.m. (local) until termination of the display.

Venetian Night Fireworks Monroe Street Harbor Chicago, IL. This safety zone will be enforced on August 2, 2003 from sunset until termination of the display.

YMCA Lake Michigan Swim Ferrysburg, MI. This safety zone will be enforced on August 16, 2003 from 8 a.m. (local) until the end of event.

Chicago River Flat Water Classic, Chicago River, Chicago, IL. This safety zone will be enforced on August 10, 2003 from 9 a.m. (local) until 3:30 p.m. (local).

In order to ensure the safety of spectators and transiting vessels, these safety zones will be in effect for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Chicago to transit the safety zone. Approval will be made on a case-by case basis. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. The Captain of the Port may be contacted by calling (630) 986–2155.

Dated: July 28, 2003.

Terrence W. Carter,

Captain, Coast Guard, Captain of the Port Chicago.

[FR Doc. 03–20332 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 188–1188a; FRL–7542–3]

Approval and Promulgation of Implementation Plans; State of MO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which establishes a state-wide air emissions banking and trading program. Approval of this revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the current state rules.

DATES: This direct final rule will be effective October 10, 2003, unless EPA receives adverse comments by September 10, 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: Comments may be submitted either by mail or electronically. Written comments should be submitted to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *kaiser.wayne@epa.gov.* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603, or by e-mail at *kaiser.wayne@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is Being Addressed in This Document?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

10 CSR 10–6.410 Emissions Banking and Trading

In order to fulfill the requirements of Section 643.220 of the Revised Statutes of Missouri, the Missouri Department of Natural Resources (MDNR) proposed and adopted a new emissions banking and trading rule, 10 CSR 10–6.410. This rule became effective on April 30, 2003.

Banking and trading programs are a market-based approach to improving air quality. The basic unit for transactions in this program is the emission reduction credit (ERC), which is a certified, permanent emission reduction equal to one ton per year of a criteria pollutant or precursor. A facility generates ERCs by voluntarily emitting below applicable requirements. As this new, lower emission level is incorporated into the facility's operating permit, this reduction is permanent. These credits can be traded, sold, or banked for later use. Another facility can purchase these credits and use them to offset emissions from expansion of existing facilities or construction of new facilities. ERCs cannot be used to avoid New Source Review (NSR) applicability or requirements for technology-based standards such as lowest achievable emission rate, best available control technology or reasonably available control technology. Credits can also be purchased to be retired, thereby reducing potential emissions in an area.

Missouri's emissions banking and trading program contains a number of measures to ensure that air quality is protected. First of all, ERCs must be real, properly quantified, permanent and surplus (not already relied upon or required by the SIP, a state or local law, ordinance or regulation, the Clean Air Act or other Federal law or regulation, an enforcement action, or a consent decree). Second, ERCs may only be used in the same maintenance area, nonattainment area or modeling domain in which they were generated. ERCs

may be used to offset only emissions of the same criteria pollutant or precursor as were reduced to generate them. For example, volatile organic compound (VOC) reductions may only be used to offset VOC emissions. If credits are to be used in an area subject to an offset ratio, enough credits must be purchased to compensate for emissions plus the area's offset ratio. These credits are permanently retired. Also, the available emissions credits in an area are reduced by an annual three per cent (3%) from the pool of banked credits. Finally, nothing in the rule is intended to limit the authority of the Missouri Air Conservation Commission to terminate or limit a facility's authorization to emit.

We note, in particular, that the new rule merely provides a mechanism for tracking ERCs. It does not in any way impact how ERCs may be used under rules such as Missouri's prevention of significant deterioration and nonattainment new source review programs (10 CSR 10–6.410(3)(B)5).

The management of the emissions banking and trading program will be handled by the Air Pollution Control Program (APCP) of the MDNR.

10 CSR 10–6.060 Construction Permits Required

The offset and banking provisions of this rule were deleted since these provisions were incorporated into the new emissions banking and trading rule. Specifically, Appendix C, Offsets, and Appendix D, Banking, were deleted. Additionally, references to these appendices were deleted and references to the new banking and trading rule were added in sections (7)(B), (8)(C), and (8)(E). This revision became effective April 30, 2003.

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving as an amendment to the Missouri SIP a revision to rule 10 CSR 10–6.060 and new rule 10 CSR 10–6.410, which were effective in the state on April 30, 2003.

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, MO 188–1188a, 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.

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. 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. 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.

a. *Electronic mail.* Comments may be sent by e-mail to *kaiser.wayne@epa.gov.* Please include identification number, MO 188–1188a, in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through *Regulations.gov,* 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.

b. *Regulations.gov.* Your use of *Regulations.gov* is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* click on ''To Search for Regulations,'' then select Environmental Protection Agency and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

2. *By Mail.* Written comments should be sent to the name and address listed in the **ADDRESSES** section of this document.

Statutory and Executive Order Reviews

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 CAA. 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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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 40 CFR Part 52

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

Dated: July 31, 2003.

William Rice,

Acting Regional Administrator, Region 7.

■ 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 AA—Missouri

■ 2. In § 52.1320(c) the table is amended under chapter 6 by revising the entry for 10–6.060 and adding a new entry for 10–6.410 to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.060	Construction Permits Required.	4/30/03	August 11, 2003 and [FR page citation].	Section 9, pertaining to hazardous air pollutants, is not SIP approved.
*	*	*	*	*
10–6.410	Emissions Banking and Trading.	4/30/03	August 11, 2003 and [FR page citation].	
*	*	*	*	*

* * * * *

[FR Doc. 03–20300 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–078–200335(a); FRL–7541–9]

Approval and Promulgation of Implementation Plans Revisions to Florida State Implementation Plan: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Florida State Implementation Plan (SIP) submitted on August 14, 1998, with the exception of one state regulation pertaining to triggers. The revision contains the transportation conformity rule pursuant to the Clean Air Act as amended in 1990 (Act), including detailed consultation procedures for implementing the transportation conformity rule. The transportation conformity rule assures that projected emissions from transportation plans, improvement

programs and projects in air quality nonattainment or maintenance areas stay within the motor vehicle emissions ceiling contained in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirement at the state level. This action streamlines the conformity process to allow direct consultation among agencies at the local level. This final approval action is limited to requirements for transportation conformity.

DATES: This direct final rule is effective October 10, 2003 without further notice, unless EPA receives adverse comment by September 10, 2003. If adverse comment is received, EPA 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.

ADDRESSES: Comments may be submitted by mail to: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in [Part (I)(B)(1)(i) though (iii)] of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9044. Mr. Laurita can also be reached via electronic mail at *laurita.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under FL–078–200335. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. Florida Department of Environmental Protection, Division of Air Resources Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the *Regulation.gov* Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

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 rulemaking identification number by including the text ''Public comment on proposed rulemaking FL–078.'' 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.

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. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to *laurita.matthew@epa.gov,* please including the text ''Public comment on proposed rulemaking FL–078.'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, 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.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *Regulations.gov* at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below.

These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking FL–078–200335.'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal holidays.

C. How Should I Submit Confidential Business Information (CBI) to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What 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 regional file/rulemaking 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

A. What Is A SIP?

The states, under section 110 of the Act, must develop air pollution regulations and control strategies to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS) established by EPA. The Act, under section 109, established these NAAQS which currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP, which protects air quality and contains emission control plans for NAAQS nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What Is the Federal Approval Process For a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public comment period, public hearing, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to EPA for inclusion in the Federally enforceable SIP. EPA must then determine the appropriate Federal action, provide public notice, and request additional public comment on the action. The possible Federal actions include approval, disapproval, conditional approval and limited approval/disapproval. If adverse comments are received, EPA must consider and address the comments before taking final action.

EPA incorporates state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP through the approval action. EPA maintains records of all such SIP actions in the CFR at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The EPA does not reproduce the text of the Federally approved state regulations in the CFR. They are ''incorporated by reference,'' which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What Is Transportation Conformity?

Conformity first appeared as a requirement in the Act's 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The 1990 Amendments to the Act expanded the scope and content of the conformity concept by defining conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states ''that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.'' The requirements of section 176(c) of the Clean Air Act apply to all departments, agencies and instrumentalities of the Federal government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved

under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. Chapter 53).

D. Why Must the State Submit A Transportation Conformity SIP?

A transportation conformity SIP is a plan which contains criteria and procedures for the State Department of Transportation (DOT), Metropolitan Planning Organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and projects to ensure that they do not cause or contribute to new violations of a NAAQS in the area substantially affected by the project, increase the frequency or severity of existing violations of a standard in such area or delay timely attainment. 40 CFR part 51.390, subpart T requires states to submit a SIP that establishes criteria for conformity to EPA. 40 CFR part 93, subpart A, provides the criteria the SIP must meet to satisfy 40 CFR part 51.390.

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each state submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. The transportation conformity rule required the states to adopt and submit a transportation conformity SIP revision to the appropriate EPA Regional Office by November 25, 1994. The State of Florida submitted a transportation conformity SIP to the EPA Region 4 on November 15, 1994. EPA did not take action on this SIP because the Agency was in the process of revising the transportation conformity requirements. EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and codified the revisions under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the states to change their rules and submit a SIP revision to EPA by August 15, 1998.

States may choose to develop in place of regulations, a memorandum of agreement (MOA) which establishes the roles and procedures for transportation conformity. The MOA includes the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including the Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and EPA.

E. How Does Transportation Conformity Work?

The Federal or state transportation conformity rule applies to all NAAQS nonattainment and maintenance areas in the state. The MPO, the DOT (in absence of a MPO), State and local Air Quality Agencies , U.S. Environmental Protection Agency and U.S. Department of Transportation (USDOT) are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions budget established in the SIP. The calculated emissions must be equal to or smaller than the Federally approved motor vehicle emissions budget in order for USDOT to make a positive conformity determination with respect to the SIP.

III. Analysis of State's Submittal

A. What Did the State Submit?

The State of Florida chose to address the transportation conformity SIP requirements using State rules that incorporate by reference portions of the Federal conformity rule and a Memorandum of Agreement (MOA) that provides the procedures for interagency consultation. The Transportation conformity rule, part 93, section 105, requires the state to develop specific procedures for consultation, resolution of conflict and public consultation. On August 14, 1998, the State of Florida, through the Department of Environmental Protection (DEP), submitted the rules for transportation conformity. DEP gave notice of rule-making proceedings to the public on July 3, 1998, held a public hearing on August 5, 1998 and the rules were approved by the Department of Environmental Protection on August 6, 1998. These amendments to the Florida Administrative Code Rule Chapter 62–204.500, filed on August 12, 1998, became effective August 31, 1998.

B. What Is EPA Approving Today and Why?

EPA is approving the Florida transportation conformity rule submitted to the EPA Region 4 office on August 14, 1998, by the Secretary of the Florida Department of Environmental Protection with one exception. EPA amended 40 CFR part 93, section 104(e) in August 2002, changing the starting point for 18-month clock trigger for conformity from the date of the SIP submittal to the date of the motor vehicle emissions budget adequacy determination. This change was made after the State's public adoption process, and therefore the State has not adopted the most current version of 93.104(e). Therefore, EPA is not taking action on the portion of the Florida rule incorporating 93.104(e) by reference, and the Federal rule applies in its place. Refer to the August 6, 2002, final rule (67 FR 50808) for more details.

Furthermore, Florida's incorporation by reference of the conformity rule did not include portions of the regulations affected by the Federal court decision in *Environmental Defense Fund* v. *Environmental Protection Agency,* 167 F.3d 641 (DC Cir. 1999) and *Sierra Club* v. *EPA, et. al.,* 129 F. 3d 137 (DC Cir. 1997). These include the following sections: 93.102(c)(1), 93.102(d), 93.118(e)(1), 93.120(a)(2), 93.121(a)(1) and 93.124(b). For all those portions not incorporated by reference, the Federal transportation conformity rule will take precedence.

EPA has evaluated this SIP revision and determined that the SIP requirements of the Federal transportation conformity rule, as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A, have been met. Therefore, EPA is approving this revision to the Florida SIP.

C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?

EPA's rule requires the states to develop their own processes and procedures for interagency consultation among Federal, state, and local agencies and resolution of conflicts meeting the criteria of 40 CFR 93.105. The SIP revision must include the process and procedures to be followed by the MPOs, DOT, FHWA, FTA, local transit operators, the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate

the development of applicable SIPs with MPOs, state DOTs, FHWA and FTA.

The State of Florida developed its statewide consultation rule based on a Memorandum of Agreement (MOA) signed by Broward County, the Broward County MPO, FHWA–FL, FTA, Florida Department of Transportation, Florida Department of Environmental Protection, Hillsborough Area Regional Transit Authority, the Environmental Protection Commission of Hillsborough County, the Hillsborough County MPO, the MPO for the Jacksonville Urbanized Area, the City of Jacksonville, Miami-Dade County, the MPO of Palm Beach County, Palm Beach County, Pinellas County, the Pinellas County MPO, Pinellas Suncoast Transit Authority, the Tri-County Commuter Rail Authority, and the U.S. Environmental Protection Agency Region 4. The consultation process developed by the Florida Department of Environmental Protection is unique to the State of Florida and is enforceable, effective August 31, 1998.

IV. Final Action

EPA is approving the aforementioned changes to the Florida SIP, with the exception of the incorporation of reference to 40 CFR part 93.104(e) in 62–204.500 which requires the State to comply with outdated conformity rule trigger provisions, because the State adopted this regulation prior to EPA's rulemaking amendment on August 6, 2002.

The EPA is publishing this rule without prior proposal because the Agency views this as 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 October 10, 2003 without further notice unless the Agency receives adverse comments by September 10, 2003.

If the EPA receives such comments, then EPA will publish a document 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. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 10, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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).)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 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 K—Florida

■ 2. In § 52.520(c) the table is amended by adding in numerical order an entry for ''62–204.500'' to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Section 62–204.500	Conformity	08/31/98	08/11/03 [Insert citation of publication].	Except for the incorporation by reference of 40 CFR 93.104(e) of the Transportation Conformity Rule.
*	*	*	*	*

* * * * *

[FR Doc. 03–20302 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV041/046–6015a; FRL–7525–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision is a regulation to prevent and control particulate air pollution from combustion of fuel in indirect heat exchangers such as boilers. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on October 10, 2003 without further notice, unless EPA receives adverse written comment by September 10, 2003. If EPA receives such comments, it 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.

ADDRESSES: Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail at *anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 29, 1996 and September 21, 2000, West Virginia submitted revisions to a regulation (45CSR2) to prevent and control particulate matter air pollution from combustion of fuel in indirect heat exchangers as formal revisions to its State Implementation Plan (SIP). The first SIP revision went to public hearing on November 29, 1994 and became effective on May 1, 1995. The second SIP revision went to public hearing on July 19, 1999 and became effective on August 31, 2000. These SIP revisions update definitions, clarify and streamline the opacity standards for visible emissions for soot blowing operations, streamline monitoring, reporting and recordkeeping requirements and provide for alternative limitations for visible emissions. Since the most recent of the two SIP revisions incorporates all of the changes from the earlier SIP revision, EPA will incorporate by reference the version of 45CSR2 submitted to EPA on September 21, 2000 into the SIP.

II. Summary of SIP Revision

The following summary discusses the substantive revisions to West Virginia's regulation 45CSR2 since the SIP was revised on August 14, 1983. A detailed summary and discussion of all of the revisions are contained in a Technical Support Document (TSD) prepared for this rulemaking action and will not be restated here. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

(A) The following definitions were revised: (1) Definitions of ''Commission'', ''Ringelmann Smoke Chart'', and ''Kanawha Valley Air Basin'', were deleted, (2) ''Director'' was modified to include persons delegated authority by the Director; (3) ''Person'' was modified to include the State of

West Virginia and the United States, and (4) Definitions for ''ASTM'', ''Control Equipment'', ''Discharge Point'', ''Heat Input'', ''Laboratory Official'', ''Malfunction'', ''Normal Operation'', ''Owner or Operator'', ''Prefilter'', ''Primary Filter'', ''Probe'', ''Sampling Plane'', ''Shutdown'', ''Start-up'', ''Test Team Supervisor'', ''Distillate Oil'', ''Indirect Heat Exchanger'', ''Natural Gas'', ''Opacity'', ''Process Heater'', ''Residual Oil'', ''Shipment'', ''Wet Scrubber System'' and ''Wood'' were added.

(B) In general, West Virginia made revisions to the visible emissions standard that substantially strengthened and clarified opacity limitations. Visible emissions from fuel burning units must be no greater than ten percent opacity on a six minute block average. An exemption from this standard is provided during soot blowing operations and fire box cleaning where a source can demonstrate that compliance cannot be practically achieved. In no event, however, may the opacity be greater than 30 percent for a total of six, six minute time periods in a calendar day. EPA interprets these exemption provisions to place the burden on the source to document that the exemption applies. Absent a formal determination from the Director that is based on information provided by the source, the exemption cannot be applied.

West Virginia's regulation 45CSR2 also provides a process for sources to request alternative visible emission standards where it is technologically or economically infeasible for the source to comply with the presumptive standard. In no event, however, may a fuel burning unit exceed 20 percent opacity. Section 110(a)(2)(A) of the Clean Air Act (CAA) requires SIPs to include federally enforceable emission limitations. West Virginia's provisions for alternative visible emission standards meets this requirement only to the extent that the regulation sets an upper limit on all alternative standards. However, the West Virginia Department of Environmental Protection (WVDEP) submitted a letter to EPA on March 19, 2003, clarifying that all alternative visible emission standards will be established as specific conditions of permits issued in accordance with federally enforceable permitting programs. The letter states that prior to issuing such permits, the WVDEP shall submit them to EPA for review. This letter has been included in the administrative record for this action and provides certainty of EPA review of alternative emission standards.

(C) The SIP revision substantially revises and enhances the testing, monitoring, recordkeeping and reporting requirements of 45CSR2. The regulation now requires that testing be conducted using EPA-approved methods and requires sources to submit monitoring plans for each emission unit that includes how emissions are to be measured, monitoring of pollution control equipment and parametric monitoring as appropriate. Sources using continuous opacity monitoring systems (COMS) presumptively meet the requirement for a monitoring plan.

The revised regulation also provides that excursions outside of the operating parameters associated with control equipment and established in a monitoring plan will not necessarily constitute a violation. On March 19, 2003, the WVDEP submitted a letter to EPA outlining the manner in which the State will implement 45CSR2, including this provision. It states that ''WVDEP interprets this provision to mean that the source has the burden of proof in demonstrating that an excursion of an operating parameter is not a violation of the visible emission standards under section 3 of 45CSR2. Visible emissions monitoring plans involving primarily the recording of parametric data require visible emissions observations to be made and recorded when an excursion of any operating parameter exceeds one hour as detailed in interpretative rule 45CSR2A * * * Such opacity tests may be used to show that the parametric excursion did not result in opacity violations or may serve to verify that opacity violations actually occurred. WVDEP or EPA could enforce against the observed opacity violations in conjunction with the parametric excursion.'' This letter is included in the administrative record for this rulemaking action.

(D) The revisions to West Virginia's regulation 45CSR2 include revised exemptions to the presumptive visible emissions standard during periods of start-up, shutdown, and malfunction. In order to qualify for an exemption during these periods, the source must demonstrate that the fuel burning unit and associated air pollution control equipment have been maintained and operated in a manner consistent with good air pollution control practices for minimizing emissions.

Generally, EPA requires that sources meet, without interruption, applicable limitations and control requirements. Where exemptions are allowed, the source must prove that an exemption applies and that the violation could not have been prevented. The Director may determine whether or not the exemption should be applied based on ''information available to the Director'', which includes, but is not limited to monitoring results, visible emissions observations, review of operating and maintenance procedures and inspection of the source. Failure of a source to provide documentation that it has conducted maintenance operations in a manner consistent with good air pollution control practices should not prevent either the State or EPA from exercising its enforcement authority.

Specifically with respect to the malfunction exemption, EPA interprets West Virginia's regulation to mean that the source has the burden to prove that the malfunction was caused by circumstances beyond the control of the source and that it could not have been prevented through the installation of proper control equipment or proper operation and maintenance. Furthermore, the source must be able to demonstrate that the malfunction was not the result of an activity that could have been foreseen and avoided. With respect to high opacity measurements during start-up and shutdown operations, the source has the same burden to prove that the violation could not have been avoided through installation of the proper control equipment or proper operation and maintenance. For all exemptions claimed by a source, the WVDEP and EPA each have the authority to determine whether or not an exemption applies under a SIP approved regulation.

West Virginia's regulation 45CSR2 also states that a malfunction constitutes an affirmative defense for any action brought for noncompliance with the weight emissions standard (particulate matter standard) if the owner/operator can demonstrate that it has met the requirement to maintain and operate the fuel burning unit(s), including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions. Although this provision does not exempt fuel burning units from the particulate matter standard during a malfunction, it does attempt to define the State's enforcement discretion when a malfunction occurs. EPA agrees that enforcement discretion may be appropriate for events such as a malfunction, where EPA concurs that a malfunction has occurred. However, EPA's approval of this rule as a SIP revision does not constitute advance approval of any exemptions, including malfunctions, or advance enforcement discretion which may be claimed under West Virginia's regulations. EPA may

take independent enforcement action to the extent allowed by section 113 of the CAA and any other applicable provisions of the CAA, notwithstanding the issuance of an exemption or the exercise of enforcement authority by the State.

(E) Variances from the visible emissions standards are provided by West Virginia's regulation 45CSR2 in the event of unavoidable fuel shortages of fuel having the characteristics needed to comply with the visible emissions standards, for emergency situations that pose a threat to public health and welfare and to fuel burning units that use a flue gas desulphurization system when the latter system must be bypassed for planned or unplanned maintenance. The variance is limited in that it sets an alternative limit on opacity and, in the case of emergency situations, requires a demonstration that the particulate matter standards are not exceeded.

(F) A new section titled ''Inconsistency Between Rules'' allows the Director to determine applicability of conflicting rules based on imposing the more stringent provisions.

These revisions strengthen the SIP by clarifying and updating definitions and updating opacity standards. The revisions also require EPA review of alternative emission limits and establish acceptable periods when emission standards do not apply.

III. Final Action

EPA is approving the revisions to 45CSR2, ''To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Direct Heat Exchangers'', submitted by West Virginia on September 21, 2000. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 10, 2003 without further notice unless EPA receives adverse comment by September 10, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. 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.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number WV041/046–6015a 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.

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. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov,* attention WV041/046–6015a. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through *Regulations.gov* , 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.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of 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 at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the

procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to 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 regional file/rulemaking 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.

IV. Regulatory Assessment Requirements

A. General 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.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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, to approve West Virginia's Regulation 45CSR2, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 30, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(56) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(56) Revisions to West Virginia's Regulations to prevent and control particulate air pollution from combustion of fuel in indirect heat exchangers, submitted on September 21, 2000 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection.

(B) Revisions to Title 45, Series 2, 45 CSR2, To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers, effective August 31, 2000.

(ii) Additional Material.

(A) Letter of March 19, 2003 from the West Virginia Division of Environmental Protection to EPA

providing clarification on the interpretation and implementation of certain regulations on air pollution control.

(B) Letter of March 29, 1996 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control particulate air pollution from combustion of fuel in indirect heat exchangers.

(C) Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(56)(i) of this section.

[FR Doc. 03–20304 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ56–250a, FRL–7527–5]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is announcing approval of revisions to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. These revisions consist of source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen (NO_X) emissions from seven facilities in New Jersey.

The EPA is also announcing that, for an eighth facility, New Jersey has revised a NO_X RACT permit emission limit that EPA previously approved and EPA is incorporating the revised stricter limit into the State's SIP.

This direct final rule approves the source-specific RACT determinations that were made by New Jersey in accordance with provisions of its regulation. The intended effect of this rulemaking is to approve source-specific emission limitations required by the Clean Air Act.

DATES: This direct final rule is effective on October 10, 2003 without further notice, unless EPA receives adverse comment by September 10, 2003. If an adverse comment is received, EPA 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.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. Please follow the on-line instructions for submitting comments.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866;

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625;

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102T), 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249 or at *Gardella.Anthony@epa.gov.*

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

I. What Action Is EPA Taking Today?
II. What Are EPA's Findings on Each State Submittal?
A. Facility-Specific NO_X Emission Limits
B. Alternative NO_X Emission Limits
C. Phased Compliance Through Repowering
D. Revised Permit for Facility-Specific NO_X Emission Limits
III. What Are the Clean Air Act (CAA) Requirements for NO_X RACT?
IV. What Are New Jersey's Regulatory NO_X RACT Requirements?
A. EPA Approval of New Jersey's NO_X RACT Regulation
B. Section 19.13—Facility-Specific NO_X Emission Limits
C. Section 19.21—Phased Compliance Through Repowering
V. What Is EPA's Analysis of Each State Submittal?
VI. What is the Procedural History of State Submittals?
VII. What is EPA's Conclusion?
VIII. Statutory and Executive Order Reviews

I. What Action Is EPA Taking Today?

EPA is approving revisions to New Jersey's ozone SIP submitted on January 21, 1998, June 12, 1998 and April 26, 1999. Seven specific sources are addressed in these SIP revisions. New Jersey revised and submitted these revisions in response to a Clean Air Act (CAA) requirement that States require Reasonably Available Control Technology (RACT) at all major stationary sources of NO_X. The seven sources addressed are: American Ref-Fuel Company/Essex County Resource Recovery Facility; Co-Steel Corporation of Sayreville (formerly New Jersey Steel Corporation); Co-Steel Raritan Corporation; Homasote Company; Milford Power Limited Partnership; University of Medicine and Dentistry of Newark, and Roche Vitamins, Inc.

Additionally, on February 21, 2001, in a letter to EPA, New Jersey indicated that with regard to the Township of Wayne, in accordance with a previously submitted and approved SIP revision the State had changed the permitted NO_X limit to a more stringent limit. The previously approved SIP revision for this source indicated that the emission limits may be revised to reflect results from required stack testing. The permit required tests had been completed and New Jersey has established a new, more stringent emission limit based upon the results of these tests. This new limit is also being incorporated into the SIP.

II. What Are EPA's Findings of Each State Submittal?

This action includes a summary of each RACT submittal. These summaries are organized into four groups as follows:

A. ''Facility-Specific NO_X Emission Limits'' for four major NO_X facilities that contain a source operation or item of equipment for which New Jersey has not established an emission limit pursuant to Subchapter 19,

B. ''Alternative NO_X Emission Limits'' for two major NO_X facilities that contain a source operation or item of equipment of a category listed in section 19.2 for which an owner or operator seeks approval of a RACT emission limit that is different from the one established in Subchapter 19,

C. ''Phased Compliance Through Repowering'' for one major NO_X facility for which an owner or operator seeks approval, pursuant to section 19.21, for a plan for phased compliance through repowering of a specific source, and

D. ''Revised Facility-Specific NO_X Emission Limits'' for one major NO_X facility for which permit conditions are revised in accordance with a previously submitted and EPA approved source-specific SIP revision which allowed for revisions based on the results of compliance tests.

EPA is only acting on the permitted emission rates and conditions related to emissions of NO_X. This action is not being taken on any other pollutants from these sources for which New Jersey may have taken permit actions.

A. Facility-Specific NO_X Emission Limits

1. American Ref-Fuel Company

The American Ref-Fuel Company owns and operates three mass burning water wall incinerators at the Essex County Resource Recovery Facility located at Newark, Essex County. The State's June 1998 SIP submittal is a revision to a May 1995 SIP revision for the same facility that was approved by EPA on January 17, 1997 (62 FR 2581). The EPA previously approved RACT controls at this facility that include Selective Non Catalytic Reduction (SNCR) technology with ammonia injection, based on a 1989 Best Available Control Technology (BACT) analysis. EPA's January 1997 approval included a facility-specific NO_X emission limit of 95 pounds per hour (lbs/hr) per unit, with a concentration limit of 174 parts per million (ppm), based on a three hour average. In the June 1998 SIP revision, the facility's RACT analysis concluded, and New Jersey agreed, that the new facility-specific NO_X emission limit is 155 ppm, based on a twenty-four hour average, while maintaining the 95 lbs/hr/unit limit based on a three hour average.

2. Co-Steel Corporation of Sayreville (Formerly New Jersey Steel Corporation)

Co-Steel Corporation owns and operates a mini steel mill, located at Sayreville, Middlesex County, that has the capability of producing 800,000 tons per year (tpy) of steel billets. The facility includes an electric arc furnace (EAF) that melts and refines scrap steel in a continuous mode of operation, and a billet reheat furnace (BRF) that reheats steel billets for producing reinforcing bars for the construction industry. The facility's RACT analysis concluded, and New Jersey agreed, that there are no control technologies available to control NO_X emissions from EAF's and the State established an emission limit based on engineering judgement. Subsequent to New Jersey's SIP submittal which EPA is acting on today, and based on actual stack emission testing, the State lowered the NO_X emission limit from 168 tpy to 78.8 tpy.

In addition, since February 2003, the State has been reviewing a new Prevention of Significant Deterioration (PSD) permit application for the EAF which may slightly increase the NO_X emission limit above the current 78.8 tpy State limit. The 78.8 tpy limit has not been submitted as a SIP revision. CSS submitted this new PSD application because it plans to increase production at the EAF. The State hopes to complete, within approximately a year, its review and public notice and comment period.

This SIP revision includes the original NO_X emission limit of 168 tpy. On the effective date of this SIP approval it will become the federally enforceable NO_X SIP limit. In order for the current State permit limit to become the federally enforceable NO_X limit, or for any future State permit limit to become the federally enforceable NO_X limit, it must be submitted and EPA must approve of it as a SIP revision.

It should be noted that while any aspect of a State permit limit is federally enforceable because it is part of a permit which is issued under the federally approved State permit program, it is not the federally enforceable NO_X SIP limit required to satisfy the SIP. A federally enforceable permit condition can be made more or less stringent in accordance with State permitting procedures. However once a permit condition is submitted and approved of as a SIP emission limit, in accordance with sections 110(l) and 116 [1] of the CAA, it can not be made more or less stringent than the federally approved limit unless it is submitted and approved by EPA as a SIP revision, or unless the approved SIP establishes procedures which allow for making the limit more stringent.

Furthermore, if the PSD permit limit revision is considered ''major'' then the Title V permit must also be revised at the same time as the PSD revision. However, if the PSD permit limit revision is considered ''minor'' then the Title V permit revision may be revised at the next scheduled cycle.

NO_X emissions from the BRF are produced primarily from natural gas fired burners with oil as the backup fuel. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is conversion of the existing four North American Manufacturing Twin Bed burners with low NO_X burners and staged fuel injection. The new facility-specific NO_X emission limit is 169.5 tpy or 0.27 pounds per million BTU (lb/mmBTU) heat input, as verified by annual stack tests. Additionally, the State's Conditions of Approval include: (1) Annual adjustment of the combustion process according to Subchapter 19.16; and (2) use of natural gas as the primary fuel with Number 2 fuel oil as a standby fuel to be used only during natural gas curtailment and up to a maximum of 1000 hours of operation in any one calendar year.

3. Co-Steel Raritan Corporation

Co-Steel Raritan Corporation owns and operates a mini steel mill, located at Perth Amboy, Middlesex County, that has the capability of producing 1,160,320 tpy of finished product. The facility includes an electric arc furnace with laddle metallurgy system (EAF/LMS) that melts and refines scrap steel in a batch mode of operation, and a billet reheat furnace (BRF) that reheats steel rods for producing finished product.

The facility's RACT analysis concluded, and New Jersey agreed, that there are no technologies available to control NO_X emissions from EAF's. The facility-specific NO_X emission limit for the EAF/LMS is 94 tpy as verified by annual stack tests and was State effective on March 6, 1998. Additionally, the State Conditions of Approval include: (1) The maximum steel scrap feed rate to the EAF shall not exceed 148 tons per hour based on 24-hour daily production; and (2) operation of the EAF steel making process limited to 7840 hours in a year period.

NO_X emissions from the BRF are produced from natural gas fired burners. The facility's RACT analysis concluded, and New Jersey agreed, that RACT is conversion of the existing three North American Manufacturing burner zones with low NO_X burners (LNB) and flue gas recirculation (FGR). The facility-specific NO_X emission limit for the BRF is 80 tpy or 0.145 lb/mmBTU, as verified by annual stack tests. Additionally, the State Conditions of Approval include: (1) The burners in all three zones of the furnace are to be replaced with LNB and FGR; (2) annual adjustment of the combustion process according to Subchapter 19.16; (3) implementation of the proposed NO_X plan by February 1, 2001; and (4) operation limited to using natural gas as fuel for the burners.

Note that this source-specific SIP revision addresses what the State approved RACT is for the EAF as of March 6, 1998 and for the BRF as of

[1] Section 116 of the CAA establishes that the State may not adopt or enforce an emission limit which is less stringent than the limit in effect under an applicable SIP.

February 1, 2001, since these are the effective dates for the NO_X RACT requirements for those sources in the State approved NO_X Control Plan. Final EPA approval will make them federally enforceable.

4. Homasote Company

Homasote owns and operates a fibre board manufacturing operation located at West Trenton, Mercer County. The facility includes a custom designed eight tier conveyor type natural gas dryer that replaced two oil or gas fired dryers that were dismantled. Replacement of the two dryers with the natural gas dryer is expected to reduce NO_X emissions by nearly 67 tons annually. The facility's RACT analysis concluded, and New Jersey agreed, that the custom design of the natural gas dryer equipment makes the addition of the generally required control technologies infeasible. The facility-specific NO_X emission limit is 0.10 lb/mmBTU, as verified by compliance stack tests. Additionally, the State's Conditions of Approval include: (1) Annual adjustment of the combustion process pursuant to Subchapter 19; (2) limitation of the amount of wet boards passing through the dryer to not more than 17,000 lb/hr; (3) limitation of the amount of natural gas used in the dryer to not more than 284 million cubic feet per year; and (4) limitation of the amount of propane used as secondary fuel in the dryer to not more than 310,000 gallons per year. Compliance with these additional conditions of approval in the State's SIP revision are to be documented by record keeping.

B. Alternative NO_X Emission Limits

5. Milford Power Limited Partnership

Milford Power operates a combined cycle cogeneration plant at the Crown Vantage Milford Mill in Milford Township, Hunterdon County. Steam and dry low NO_X combustors are used to comply with Subchapter 19's NO_X RACT emission limit during periods of normal operation, however steam is not available or cannot otherwise be used during start-up, shutdown and fuel transfer. The facility's RACT analysis concluded, and New Jersey agreed, that dry low NO_X combustors without steam addition had been demonstrated to be RACT for the cogeneration plant during start-up, shutdown and fuel transfer periods. The alternative NO_X emission limits are 0.34 lb/mmBTU during periods of start-up and shutdown and 0.73 lb/mmBTU during fuel transfer periods. Additionally, the State's Conditions of Approval include: (1) Maximum number of start-ups and shutdowns shall not exceed 75 events of each type per calendar year; (2) maximum number of fuel transfers shall not exceed 10 events per calendar year; and (3) the facility shall maintain records of all start-up, shutdown and fuel transfer events.

6. University of Medicine and Dentistry

NO_X emissions at the University of Medicine and Dentistry, located at Newark, Essex County, are from three cogeneration units and three non-utility boilers. The facility operates three identical cogeneration units that include Solar Centaur combustion turbines each with a supplementary fired duct burner to provide electricity and steam to its campus. The plant uses natural gas as the primary fuel and number 2 fuel oil as backup. The facility's RACT analysis determined, and New Jersey agreed, that increased water injection to the turbine has been determined to be RACT for the cogeneration units. The alternative NO_X emission limit is 0.167 lb/mmBTU, averaged over any calendar day using Continuous Emission Monitoring System (CEMs), when combusting natural gas. For combustion of number 2 fuel oil, New Jersey lowered the permitted NO_X emission limit from 0.40 lb/mmBTU to 0.35 lb/mmBTU which is the presumptive limit established in Subchapter 19.

The facility also operates three Cleaver Brooks non-utility boilers to provide steam to its Newark campus. The boilers only operate during periods of high demand (peaking units) or during periods of interruption of the three cogeneration units, which are the primary source of steam. The facility's RACT analysis concluded, and New Jersey agreed, that due to the low capacity factor and remaining useful life of only seven years, there are no technologies that are economically feasible to control NO_X emissions from the three boilers. The alternative NO_X emission limit is 0.55 lb/mmBTU when combusting either natural gas or number 6 fuel oil for each boiler. Additionally, the State's Conditions of Approval include: (1) Annually adjusting the combustion process pursuant to Subchapter 19; (2) stack testing in accordance with Subchapter 19 for determining compliance; (3) operating each boiler no more than 2920 hours in any calendar year; and (4) complying with Subchapter 19's NO_X emission limit of 0.28 lb/mmBTU by June 1, 2002 and thereafter, should the three non-utility boilers continue to operate beyond May 31, 2002.

C. Phased Compliance Through Repowering

7. Roche Vitamins, Inc.

Roche Vitamins, Inc. operates a powerhouse facility in Belvidere, Warren County, which includes the following: a packaged water tube steam boiler with a rated heat input of 84.4 mmBTU/hr (Boiler No. 1), and a cogeneration system consisting of one 21.5 Megawatt diesel reciprocating engine and a heat recovery steam generator (HRSG) equipped with a 179 mmBTU/hr duct burner (Boiler No. 6). Roche Vitamins, Inc. proposed a repowering plan in which it committed to replace Boiler No.1 and the cogeneration unit with a new cogeneration unit consisting of a new gas turbine and a new HRSG. New Jersey estimates that after repowering, NO_X emissions from the facility will be reduced by nearly 2023 tons annually. The repowering plan as approved by the State requires the following: (1) The new cogeneration unit to comply with state of the art requirements; (2) the new cogeneration unit be installed in accordance with the milestones specified in a federally enforceable agreement; (3) the repowering be completed by May 1, 1999; (4) fuel restrictions apply to Boiler Nos. 1 and 6 and to the diesel engine; (5) after May 1, 1999, Boiler No. 1 be used as an emergency unit, not to exceed 500 hours per calendar year; and (6) after May 1, 1999, the original cogeneration unit will no longer be operated.

The repowering plan further requires that, during the interim period of May 1, 1995 and May 1, 1999, the NO_X emission limits and other requirements for the boilers and cogeneration units are as follows: (1) For Boiler No. 1, 0.40 lb/mmBTU when firing natural gas, and 0.30 lb/mmBTU when firing a mixture of number 6 oil and lasalocid oil; (2) for the cogeneration facility (engine and HRSG), 582 lb/hr when firing number 6 oil in the engine and natural gas in the duct burner; (3) for the engine only, 8.0 grams NO_X per horsepower-hour; (4) for Boiler No. 6 (duct burner) only, 0.20 lb/mmBTU; and (5) annual adjustment of the combustion process on Boilers No. 1 and 6.

D. Revised Permit for Facility-Specific NO_X Emission Limits

8. Township of Wayne, Mountain View Water Pollution Control Facility

The Township of Wayne, Mountain View Water Pollution Control Facility owns and operates two multiple hearth type sewage sludge incinerators which burn sewage sludge from its wastewater

treatment plant located in Wayne, Passaic County. On October 20, 1998, EPA approved (63 FR 55949) a December 1996 SIP revision for this same facility that included a RACT limitation and a State requirement to perform compliance testing which would confirm or establish a new facility-specific NO_X emission limit. In a letter dated February 21, 2001, New Jersey informed EPA that, as a result of stack tests conducted in April 1998, the State, on December 21, 2000, revised the facility-specific NO_X emission limit requirements previously approved by EPA. The maximum allowable NO_X emission limit was revised from 12.0 lb/hr to 7.0 lb/hr per incinerator and the maximum allowable sludge feed rate was revised from 1.0 dry ton per hour to 0.8 dry ton per hour per incinerator. EPA is incorporating the revised permit condition into the SIP.

Once a permit limit is submitted and approved of by EPA as a SIP emission limit, in accordance with sections 110(l) and 116 of the CAA, it can not be made less stringent than the federally approved limit unless it is submitted and approved as a SIP revision with the exception of cases where the approved SIP establishes procedures which allow for making the limit more stringent. The CAA is silent on whether a more stringent adjustment of a previously approved SIP limit must be submitted to EPA as a SIP revision. In the case of Township of Wayne, the Agency has accepted notification of a new limit rather than submission as a SIP revision because the previously approved SIP revision stated that the limit could be made more stringent as a consequence of required compliance test results. This Federal Register notice is the agency publication of the new NO_X limit. The new limit will become the new federally enforceable NO_X SIP limit upon the effective date of this Federal Register notice. At that point, it can not be made less stringent without submission of, and approval by EPA as, a SIP revision.

III. What Are the Clean Air Act Requirements for NO_X RACT?

The CAA required certain states to develop RACT regulations for major stationary sources of NO_X and to provide for the implementation of the required measures as soon as practicable but no later than May 31, 1995. Under the CAA, the definition of major stationary source is based on the tons per year (tpy) air pollution a source emits and the quality of the air in the area of the source. In ozone transport regions, attainment/unclassified areas as well as marginal and moderate ozone nonattainment areas, a major stationary source for NO_X is considered to be one which emits or has the potential to emit 100 tpy or more of NO_X and is subject to the requirements of a moderate nonattainment area. New Jersey is within the Northeast Ozone Transport Region, established by section 184(a) of the CAA, and has defined a major stationary source for NO_X as a source which has the potential to emit 25 tpy, the level set for severe ozone nonattainment areas. For detailed information on the CAA requirements for NO_X RACT see the Technical Support Document prepared for today's rulemaking action.

IV. What are New Jersey's Regulatory Requirements for NO_X RACT?

A. EPA Approval of New Jersey's NO_X RACT Regulation

On November 15, 1993, New Jersey submitted to EPA, as a revision to the SIP, Subchapter 19 of Chapter 27, Title 7 of the New Jersey Administrative Code. Subchapter 19 is entitled ''Control and Prohibition of Air Pollution From Oxides of Nitrogen.'' This Subchapter provides the NO_X RACT requirements for New Jersey and was effective on December 20, 1993. New Jersey submitted Subchapter 19 to EPA, as a revision to the SIP, on November 15, 1993 and on January 27, 1997, the EPA final approval action on Subchapter 19 was published in the **Federal Register** (62 FR 3804).

On March 24, 1995, New Jersey adopted amendments to Subchapter 19 and submitted them to EPA for approval as a SIP revision on June 21, 1996. On March 29, 1999, the EPA final approval action on the revised Subchapter 19 was published in the **Federal Register** (64 FR 14832).

B. Section 19.13—Facility-Specific NO_X Emission Limits

Section 19.3 of New Jersey's regulation establishes a procedure for a case-by-case determination of what represents RACT for a particular facility item, equipment or source operation. This procedure is applicable in two situations: (1) Except for non-utility boilers, if the major NO_X facility contains any source operation or item of equipment of a category not listed in section 19.2 which has the potential to emit more than 10 tons of NO_X per year, or (2) if the owner or operator of a source operation or item of equipment of a category listed in section 19.2 seeks approval of an alternative maximum allowable emission rate.

New Jersey's procedure requires either submission of a NO_X control plan if specific emission limitations do not apply to thespecific source, or submission of a request for an alternative maximum allowable emission rate if specific emission limitations do apply to the specific source. In either case, the owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. RACT determinations for an alternative maximum allowable emission rate must consider control technologies (*e.g.*, low NO_X burners) and alternative control strategies (*e.g.*, emissions averaging, seasonal fuel switching to natural gas, and repowering). Also, in either case, Subchapter 19 requires that New Jersey establish emission limits which rely on a RACT determination specific to the facility. The resulting NO_X control plan or alternate maximum allowable emission rate must be submitted to EPA for approval as a SIP revision.

C. Section 19.21—Phased Compliance Through Repowering

Section 19.21 of New Jersey's regulation allows attainment of compliance through repowering. Under Subchapter 19, repowering is defined as the permanent cessation of steam generator operations replaced by either the installation of a new combustion source or the purchase of heat or power from a new combustion source located in New Jersey.

Section 19.21 requires that a source owner who requests compliance through repowering: (1) Enter into an enforceable commitment with the State to repower; (2) submit an analysis that defines RACT for the interim period between May 31, 1995 and the date the unit will be repowered; (3) specify a date, which can be no later than May 31, 1999, by which the unit will be repowered; (4) include appropriate milestones for the repowering project; (5) meet applicable SIP and Federal requirements upon the repower date; and (6) ensure that the repowering commitment is federally enforceable.

Section 19.21 also requires that a source establish emission limits using advanced control techniques and commit to meet these limits once the source is repowered. The maximum allowable NO_X emissions rate, expressed in pounds per million BTUs, for repowered utility boilers ranges from 0.1 to 0.2 depending upon the type of boiler and the type of fuel. Section 19.21 allows repowering of all combustion sources.

V. What Is EPA's Analysis of Each State Submittal?

After reviewing the submittals, EPA found them all administratively and

technically complete. For each source discussed in this rulemaking, EPA determined that the New Jersey letter of approval identifies NO_X requirements which represent RACT for the source. The conditions contained in the Conditions Of Approval Documents (COADs) or revised permits include, for example, emission limits, work practice standards, and testing, monitoring, and record keeping/reporting requirements. These conditions are consistent with the NO_X RACT requirements specified in Subchapter 19 and conform to EPA NO_X RACT guidance. Please note there may be other requirements, such as adequate monitoring, which States and sources will need to provide for, through the Title V permitting process. Therefore, EPA is approving New Jersey's three source-specific SIP revision submittals, which include seven source-specific RACT determinations, dated January 21, 1998, June 12, 1998 and April 26, 1999.

In addition, for an eighth source-specific RACT determination, New Jersey has revised a NO_X RACT permit emission limit that EPA previously approved and EPA is incorporating the revised stricter limit into the State's SIP. As explained previously in this rulemaking notice, in a February 21, 2001 letter, the State notified EPA that it lowered the limit in accordance with the approved SIP.

EPA's evaluation of each RACT submittal is detailed in a document entitled ''Technical Support Document-NO_X RACT Source-Specific SIP Revisions-State of New Jersey.'' A copy of that document is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. EPA's summary of findings for each facility Is found in Section II of this Notice.

VI. What Is the Procedural History of State Submittals?

Prior to adoption of the seven source-specific RACT revisions discussed in this rulemaking, New Jersey published proposed limitations for each source specific RACT determination in local newspapers and provided thirty (30) days for public comment and an opportunity to request a public hearing. New Jersey reviewed and responded to all comments. The State then determined that the proposed NO_X control plans, alternative maximum allowable emission rates and repowering plan conform with the provisions of sections 19.13 or 19.21 of New Jersey's regulation. These RACT determinations were made during 1996, 1997 and 1998.

After New Jersey made each determination it issued letters of approval to each owner. These letters included and incorporated a COAD or a revised permit. Each COAD or revised permit contains conditions consistent with Subchapter 19. These conditions are considered approved permit conditions which are fully enforceable by the State. Each COAD and revised permit is identified in the ''Incorporation by reference'' section at the end of this Notice.

New Jersey submitted the seven source-specific SIP revisions to EPA on January 21, 1998, June 12, 1998 and April 26, 1999.

VII. What Is EPA's Conclusion?

The EPA is approving the source-specific SIP revisions described above as RACT for the control of NO_X emissions from the seven sources identified in the three source-specific SIP revisions and for an eighth source, is approving the stricter limit revised by the State in accordance with a SIP revision which EPA previously approved. Please note that if EPA receives an adverse comment on an amendment, paragraph, or a specific source addressed in this direct final rule and if the provision that relates to the adverse comment may be severed from the remainder of the rule, EPA may sever the provision and adopt as final those provisions of the rule that are not the subject of the adverse comment.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment 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 these same seven source-specific SIP revisions should adverse comments be filed. This final rule will be effective October 10, 2003 without further notice unless the Agency receive relevant adverse comments by September 10, 2003.

If the EPA receives adverse comments, then EPA will publish a notice withdrawing the final rule or sever that portion of the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 10, 2003 and no further action will be taken on the proposed rule.

VIII. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

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

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 1, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

■ 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 FF—New Jersey

■ 2. Section 52.1570 is amended by adding new paragraph (c)(73) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(73) Revisions to the State Implementation Plan submitted by the New Jersey Department of Environmental Protection on January 21, 1998, June 12, 1998 and April 26, 1999; and a letter which notified EPA of a revised permit limit submitted by the New Jersey Department of Environmental Protection on February 21, 2001.

(i) Incorporation by reference.

(A) Conditions of Approval Documents (COAD) or modified prevention of significant deterioration (PSD) permit:

The following facilities have been issued COADs or modified PSD permit by New Jersey:

(*1*) American Ref-Fuel Company/ Essex County Resource Recovery Facility, Newark, Essex County, NJ PSD permit modification dated July 29, 1997. Incorporation by reference includes only the NO_X emission limits in section A.6 of the July 29, 1997 PSD permit.

(*2*) Co-Steel Corporation's (formerly New Jersey Steel Corporation) electric arc furnace/melt shop and billet reheat furnace, Sayreville, Middlesex County, NJ COAD approval dated September 3, 1997.

(*3*) Co-Steel Raritan Corporation's electric arc furnace/ladle metallurgy system and billet reheat furnace, Perth Amboy, Middlesex County, NJ COAD approval dated June 22, 1998.

(*4*) Homasote Company's natural gas dryer (wet fibreboard mat dryer), West Trenton, Mercer County, NJ COAD approval dated October 19, 1998.

(*5*) Milford Power Limited Partnership's combined cycle cogeneration facility, Milford, Hunterdon County, NJ COAD approval dated August 21, 1997.

(*6*) University of Medicine and Dentistry of New Jersey cogeneration units and Cleaver Brooks non-utility boilers, Newark, Essex County, NJ COAD dated June 26, 1997.

(*7*) Roche Vitamins Inc's cogeneration facility and Boiler No. 1, Belvidere, Warren County, NJ COAD dated June 10, 1998. The cogeneration facility consists of one reciprocal engine (21.5 MW) and one heat recovery steam generator (HRSG) equipped with a duct burner (Boiler No. 6).

(*8*) Township of Wayne, Mountain View Water Pollution Control Facility's sewage sludge incinerators, Passaic County, NJ permit revision dated December 21, 2000.

(ii) Additional information—Documentation and information to support NO_X RACT facility-specific emission limits, alternative emission limits, or repowering plan in three SIP revisions addressed to Regional Administrator Jeanne M. Fox from New Jersey Commissioner Robert C. Shinn, Jr. and one letter addressed to Acting Regional Administrator William J. Muszynski from Dr. Iclal Atay, Chief Bureau of Air Quality Engineering dated:

(A) January 21, 1998 SIP revision for two sources;

(B) June 12, 1998 SIP revision for one source;

(C) April 26, 1999 SIP revision for four sources; and

(D) February 21, 2001 for a revised permit limit for one source.

[FR Doc. 03–20424 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 172–0276a; FRL–7524–7]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that concern permitting of sources that have the potential to emit above major source thresholds but do not actually emit pollutants at those levels.

DATES: These revisions are effective on October 10, 2003 without further notice, unless EPA receives adverse comments by September 10, 2003. If EPA receives

such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Mail comments to Gerardo Rios, Permits Office Chief (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *rios.gerardo@epa.gov.*

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

Permits Office (AIR–3), Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

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

Great Basin Unified Air Pollution Control District, 157 Short Street, Bishop, CA 93514.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: David Wampler, Permits Office, (Air-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 972–3975.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

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

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
GBUAPCD	218	Limiting Potential to Emit	12/04/95	05/10/96
GBUAPCD	219	Request for Synthetic Minor Status	12/04/95	05/10/96

On July 19, 1996, the submittal of Rules 218 and 219 were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of Rules 218 and 219 in the SIP.

C. What Are the Provisions in the Submitted Rules?

Rule 218 includes the following significant provisions:

- The owner or operator of a specified stationary source, that would otherwise be designated a major source because the potential to emit exceeds the major-source threshold for regulated pollutants, would be allowed under Rule 218 to avoid being subject to Title V, federal permitting requirements, if the actual annual emissions do not exceed any of the following emission limitations: (1) 50 percent of the major-source thresholds for regulated air pollutants excluding hazardous air pollutants (HAPs), or (2) 5 tons per year of a single HAP, or (3) 12.5 tons per year of any combination of HAPs, or (4) 50 percent of any lesser threshold for a single HAP as the EPA may establish as a rule.
- There are also alternate operational limitations for specific stationary sources that may be used provided that at least 90 percent of the source's total emissions in every 12-month period are associated with the sources with the operational limitations.
- There are detailed recordkeeping and reporting requirements to assure compliance with the emission limitations and operational limitations.

Rule 219 includes the following significant provisions:

- The owner or operator of a specified stationary source, that would otherwise be a major source, would be allowed to request and accept federally-enforceable limits such that the annual potential to emit would be below major-source thresholds in order to allow the source to be considered a ''synthetic minor source.''
- The limits to the potential to emit must be approved by EPA and must be permanent, quantifiable, and practically enforceable.
- A synthetic minor source would not be subject to the permitting requirements of Rule 217, Title V-Federal Operating Permits or of Title V of the CAA. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

In combination with the other requirements, the rules in today's action must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). These rules were also evaluated using EPA policy describing options sources have for limiting their potential to emit under section 112 and Title V of the CAA. This policy is generally described in a January 25, 1995 policy memorandum entitled, *Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act* from John Seitz, Director of EPA's Office of Air Quality Planning and Standards, to EPA's Regional Air Division Directors. Rule 218 was compared to a model California prohibitory rule contained in the January 25, 1995 policy memorandum.

Rule 219 was also compared to EPA guidance on establishing a synthetic-minor operating-permits program published on June 28, 1989 (54 FR 27247). Permits issued pursuant to this voluntary program that meet the June 28, 1989 criteria are considered federally enforceable for criteria pollutants. The synthetic minor mechanism may also be used to create emission limits for emission of hazardous air pollutants (HAPs), if it is approved pursuant to section 112(l) of the CAA. In short, a program to create federally-enforceable limits on a source's potential to emit should:

- Be approved by EPA into the SIP.

• Impose legal obligations for operating permit holders to adhere to permit limitations.

• Provide for limits that are enforceable as a practical matter.

• Have permits issued in a process that provides the opportunity for review and comment by the public and EPA.

• Ensure that there is no relaxation of otherwise applicable Federal requirements.

B. Do the Rules Meet the Evaluation Criteria?

We believe that these rules are generally consistent with the relevant policy and guidance regarding enforceability and SIP relaxations and with EPA policy describing options sources have for limiting their potential to emit under section 112 and Title V of the CAA. Rule 219 is consistent with EPA criteria published on June 28, 1989 (54 FR 27247) for approving and incorporating into the SIP synthetic-minor federally-enforceable state operating permits. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

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

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed rule section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 10, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 10, 2003. This will incorporate these rules into or rescind rules from the federally enforceable SIP.

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

III. Background Information

Why Were These Rules Submitted?

Sections 172 and 173 of the CAA require that Title V permits be obtained for affected sources, major sources, and any sources required by parts C and D of the CAA. If certain sources could limit their potential to emit to below major-source thresholds or satisfy synthetic minor-source requirements, they would not be required to obtain a Title V permit. CARB submitted administrative rules to support these actions for qualified sources.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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, Incorporation by reference, Intergovernmental relations, Permitting, Reporting and recordkeeping requirements.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(231)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(231) * * *

(i) * * *

(E) Great Basin Unified Air Pollution Control District.

(*1*) Rules 218 and 219, adopted on December 4, 1995.

* * * * *

[FR Doc. 03–20426 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 03–15277]

RIN 2127–AH16

Federal Motor Vehicle Safety Standards: Heavy Vehicle Antilock Brake System (ABS) Performance Requirement

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In March 1995, NHTSA published a final rule amending the hydraulic and air brake standards to require medium and heavy vehicles (*e.g.*, truck tractors, trailers, single unit trucks, and buses) to be equipped with antilock brake systems (ABS) to improve the directional stability and control of these vehicles during braking. We supplemented the ABS requirements for truck tractors with a braking-in-a-curve performance test. The braking-in-a-curve test was not applied to single-unit trucks or buses or to air-braked trailers because we had performed only limited testing of ABS-equipped single-unit vehicles. We stated that we would continue research on dynamic performance tests for single-unit trucks, buses, and trailers, and would consider applying performance test requirements to these vehicles in the future.

After issuing the final rule, we tested several ABS-equipped single-unit trucks and buses equipped with both hydraulic and air brakes. Our testing and research indicated that the braking-in-a-curve performance test requirement is practicable for those vehicles. Accordingly, in December 1999, we proposed applying the braking-in-a-curve requirements to them to complement both the ABS equipment requirements and stopping distance requirements. This final rule extends application of the braking-in-a-curve dynamic performance test requirement to single-unit trucks and buses that are required to be equipped with ABS.

DATES: The amendments made in this rule are effective October 10, 2003. If you wish to petition for reconsideration of this rule, your petition must be received by September 25, 2003.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Jeff Woods, Safety Standards Engineer, Office of Crash Avoidance Standards, Vehicle Dynamics Division at (202) 366–2720, and fax him at (202) 493–2739.

For legal issues, you may call: Mr. Otto Matheke, Attorney-Advisor, Office of the Chief Counsel at (202) 366–2992, and fax him at (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

On December 18, 1991, the Intermodal Surface Transportation Efficiency Act (ISTEA or Act), Public Law 102–240 was signed by President George H. Bush and became law. Section 4012 of the Act directed the Secretary of Transportation to initiate rulemaking for improving the braking performance of new commercial motor vehicles—defined by ISTEA as those with a GVWR of over 26,000 pounds (lbs.)—including truck tractors, trailers, and dollies. The Act directed that in that rulemaking, the agency examine antilock brake systems (ABS), means of improving brake compatibility, and methods of ensuring the effectiveness of brake timing. In response to that congressional mandate, we published a final rule requiring ABS to be installed on hydraulic and air-braked medium and heavy vehicles on March 10, 1995 (60 FR 13216) (hereinafter referred to as the stability and control final rule). For truck tractors only, the ABS requirements included a braking-in-a-curve performance test on a low-coefficient of friction surface. The test includes a full brake application in both the lightly loaded (bobtail) configuration and with the tractor loaded to its GVWR, the latter using an unbraked control trailer.

Due to limited data and concerns regarding the braking-in-a-curve test, the March 1995 Final Rule did not apply the test to single-unit trucks, buses, or air-braked trailers. We stated, however, that we would continue research on dynamic performance tests for single-unit vehicles and would consider proposing to apply performance test requirements to those vehicles at a future time.[1]

II. Single-Unit Truck and Bus ABS Performance Testing

We conducted ABS testing of single-unit trucks and buses in 1996 and 1997 at our Vehicle Research and Test Center (VRTC) in East Liberty, OH.[2] Five air-

[1] The agency published two companion final rules on the same day, one to reinstate stopping distance requirements for air-braked medium and heavy vehicles (60 FR 13286) and another to implement stopping distance requirements for hydraulic-braked medium and heavy vehicles (60 FR 13297). The cost/benefit information used for the three final rules was based on NHTSA's Final Assessment, *Final Rules, FMVSS Nos. 105 & 121, Stability and Control During Braking Requirements and Reinstatement of Stopping Distance Requirements for Medium and Heavy Vehicles,* published in February, 1995.

[2] DOT HS 808941, *Single Unit Truck and Bus ABS Braking-In-A-Curve Performance Testing,* February 1999.

braked straight trucks and two hydraulic-braked buses, all equipped with ABS, were used in the tests to aid in determining if the braking-in-a-curve performance test for tractors should be applied to single-unit vehicles. The vehicles were subjected to all the requirements of Standards No. 105 and No. 121, including the braking-in-a-curve performance tests.

The braking-in-a-curve tests began with the determination of a maximum drive-through speed, followed by the determination of the maximum brake-through speed. As defined in Standard No.121, ''maximum drive-through speed'' is the fastest constant speed that a vehicle can be driven through at least 200 feet of curve arc length without departing the lane. ''Maximum brake-through speed'' is defined as the fastest speed at which a full brake application can be made while the vehicle is in the curve, without the vehicle departing the lane. Determination of the maximum brake-through speed provided data on the potential margin of compliance or non-compliance for the test vehicles.

In the agency's testing, both trucks and school buses were tested in loaded-to-GVWR and lightly loaded conditions. The trucks were ABS equipped chassis-cabs without bodies or equipment that would normally be installed by a second-stage manufacturer. However, to simulate the lightly loaded condition of completed vehicles, a 2,500 lb load frame with an integrated roll bar was installed on the chassis cabs. Trucks tested in the loaded-to-GVWR condition were weighted to their GVWRs, with the axle loads in proportion to their GAWRs. Two ABS equipped school buses were also tested in loaded-to-GVWR and lightly loaded conditions. The loaded-to-GVWR tests on the school buses were conducted with sand bags placed on the floor and seats so the total vehicle weight was equal to its GVWR, with axle loads in proportion to their GAWRs.

The braking-in-a-curve tests were conducted on a low friction wetted surface. The test curve had a 12-foot-wide lane with a 500-foot radius of curvature (marked from the center of the lane). Traffic cones were placed on both sides of the lane at 20-foot intervals. The surface had a cross slope of one percent and approximately zero longitudinal slope. The peak coefficient of friction (PFC) of the surface during the time of the testing ranged from 0.34 to 0.41. The effect of the cross slope was such that the test condition was considered to be worst case, since it may not be possible to conduct all road testing on a completely level road surface, due to variability and water run-off design requirements. The lower end of the PFC range was also considered to be a worst-case test condition.

The results of the testing at VRTC indicated that the braking-in-a-curve test is practicable, repeatable, and safe for single unit vehicles. Six of the seven vehicles tested met the performance requirements now in effect for tractors, *i.e.*, they stayed in the lane in at least three out of four stops when subjected to maximum braking at 75 percent of the maximum drive-through speed. In fact, these six vehicles remained in the lane during all four stops at 75 percent of the drive-through speed, all with a large margin of compliance.

III. Notice of Proposed Rulemaking

On December 21, 1999, the agency published a notice of proposed rulemaking in the **Federal Register** (64 FR 71377) containing the agency's proposal for a braking-in-a-curve test for single-unit trucks and buses. NHTSA proposed that the braking-in-a-curve test be conducted in two different conditions: with the vehicle lightly loaded, and with the vehicle loaded-to-GVWR. The agency proposal also specified the same road test geometry now in effect for tractors, namely a 12-foot-wide lane with a 500-foot radius measured at the center of the lane with the test surface having a peak friction coefficient (PFC) of 0.5. The proposal also specified that the test speed is 75 percent of the maximum drive-through speed or 30 mph, whichever is lower. The brake pedal force specification proposed in the notice called for a pressure of 150 pounds to be achieved at the brake pedal within 0.2 seconds from the initial application and maintained for the duration of the stop. The proposal specified that the brake temperature at the time of testing is to be between 150 and 200° F and the test performed with the transmission in neutral or the clutch pedal depressed. Finally, the agency proposal specified that in 3 of 4 consecutive stops, the test vehicle is to remain in the 12 foot wide marked lane when tested in both the lightly loaded condition and when loaded-to-GVWR in proportion to each GAWR.

Since the braking-in-a-curve test is one brake test in a test sequence, the agency proposed that the braking-in-a-curve test for air-braked single-unit trucks and buses be conducted immediately after the burnish procedure as indicated in Table I of Standard No. 121, with the loaded-to-GVWR tests followed by the lightly loaded tests. We also proposed that the braking-in-a-curve test for hydraulic-braked single-unit trucks and buses be conducted immediately after the post-burnish brake adjustment in S7.4.2.2, with the loaded-to-GVWR tests followed by the lightly loaded tests.

In order to provide manufacturers with sufficient lead time to comply with the proposed requirements, the proposal indicated that the effective date for the braking-in-a-curve test requirements, for both air and hydraulic-braked single unit trucks and buses, be two years after publication of the final rule in the **Federal Register**.

IV. Public Comments

NHTSA received comments about its proposal from vehicle and brake manufacturers as well as safety and trade groups. Three vehicle manufacturers, DaimlerChrysler Corporation (DaimlerChrysler), Ford Motor Company (Ford) and Mitsubishi Motors R&D of America Incorporated (Mitsubishi), submitted comments. Comments were also received from Haldex Brake Products Corporation (Haldex), Bendix Commercial Vehicle Systems (BCVS) and Bosch Braking Systems Corporation (Bosch). Several trade associations, National Truck Equipment Association (NTEA), Heavy Duty Brake Manufacturers Council (HDBMC), American Trucking Associations (ATA) and Truck Manufacturers Association (TMA), offered their views. One safety group, Advocates for Highway Safety (Advocates), submitted comments as well.

With the exception of TMA and NTEA, the commenters generally supported the agency proposal. However, many of the commenters argued that requiring that the braking-in-a-curve test be run in both the loaded-to-GVWR and lightly loaded conditions was unnecessary and that the lightly loaded test alone was sufficient. In addition, a number of commenters indicated dissatisfaction with the proposed test sequence and some of the proposed test conditions. Other commenters indicated their belief that the agency's proposal underestimated the compliance burdens that the proposal, if adopted, would impose on final stage manufacturers and alterers.

One commenter addressed what it believed to be shortcomings in the configuration of the test curve. Advocates stated that the proposed test configuration—a zero longitudinal slope, 500-foot continuous curve radius, 12-foot wide lane and one percent side slope—does not approach worst-case real-world operating condition. In addition to criticizing the severity of the test, Advocates viewed the proposed test as not sufficiently demanding and

indicated that few vehicles equipped with ABS would fail the proposed test.

DaimlerChrysler disagreed with the proposed requirement that ''no part'' of the test vehicle leave the marked lane of the braking curve during a stop. Instead, DaimlerChrysler requested that this requirement be changed so that a vehicle would comply if no part of any point of contact of any tire left the lane during the stop. The company noted that the agency proposal did not clearly indicate how any departure of any part of the vehicle from the traveled lane would be detected. DaimlerChrysler further indicated that vehicles with large rear overhang would be placed at a severe disadvantage since any lateral movement of the rear wheels would result in the rear of a longer vehicle moving closer to the outside of the lane. DaimlerChrysler also requested that NHTSA delete the specification that the braking-in-a-curve test be conducted on a wet surface. In DaimlerChrysler's view, the requirement that the surface be wet is unnecessary. In the company's view, it is immaterial whether the test surface is dry or wet if the surface has the proper coefficient of friction (PFC).

The comments submitted by vehicle manufacturers and trade groups were nearly unanimous in their disapproval of the proposed requirement that testing be conducted with vehicles in both a lightly loaded condition and a loaded-to-GVWR condition. HDBMC stated that many single-unit trucks and buses have already been tested for braking-in-a-curve performance and that, with regard to loading condition, the worst-case condition is when the vehicle is lightest. HDBMC also stated that in the case of testing in the loaded-to-GVWR condition, it recommends that the center-of-gravity height for the ballast should be not more than 32 inches above the frame rails. Haldex and HDBMC also recommended that the 32-inch load height for single-unit trucks be specified for 60-mph straight-line stopping distance tests as well.

BCVS advocated deletion of the fully-loaded braking-in-a-curve test for the following reasons: A lightly-loaded test condition is the most severe condition; the SAE recommended practice (RP) J1626 ''Braking Stability and Control Performance Test Procedures for Air and Hydraulic Brake Equipped Trucks, Truck-Tractors and Buses' specifies that the braking-in-a-curve performance test be conducted in the lightly-loaded condition with the loaded-to-GVWR condition optional; loading the vehicle increases the risk of rollover; and determining an appropriate loading specification for the variety of vehicle configurations and body forms would be difficult. BCVS further stated that if NHTSA believes that the fully-loaded braking-in-a-curve test is essential, then the load center-of-gravity height should be established at a height that is not likely to lead to vehicle rollover. Concerns about vehicle rollover apparently also prompted BCVS to suggest that the allowance of 1,000 lbs. for a rollbar, and 500 lbs. for driver and instrumentation, which was proposed in the NPRM for the lightly-loaded braking-in-a-curve test for single-unit trucks and buses, be applied to other lightly-loaded road tests in FMVSS No. 121.[3]

Ford stated that it believes there is no useful information to be obtained from conducting the braking-in-a-curve test with the vehicle loaded-to-GVWR. Ford cited the fact that the SAE Truck and Bus Vehicle Deceleration and Stability Subcommittee found that 29 out of 31 single-unit vehicles tested in the braking-in-a-curve test the lightly-loaded test condition performed the same or worse than when tested in the loaded-to-GVWR test condition. Ford states that the two vehicles that performed better in the loaded-to-GVWR test condition were heavier-duty trucks and had sufficient margins of compliance in both loading conditions.

TMA stated that because of safety concerns, NHTSA should reconsider its decision to require the braking-in-a-curve test in the loaded-to-GVWR test condition. TMA believes that a loaded-to-GVWR vehicle could slide off the low coefficient test surface of the 500-foot radius curve onto a higher coefficient of friction surface and then rollover. TMA cited NHTSA statements in the NPRM that the NHTSA tests involving vehicles with a load at a high center of gravity height caused an unsettling feeling [to the test driver] with regard roll stability. TMA presented data to support its view that testing in the loaded-to-GVWR condition is less stringent than testing in the lightly-loaded condition. TMA concluded that testing in the loaded-to-GVWR condition provides no additional confirmation of vehicle performance, presents a significant safety risk of vehicle rollover, and would increase test burdens without any measurable benefit to vehicle safety.

In addition to advocating removal of the requirement that vehicles be tested in a loaded-to-GVWR condition, a number of commenters indicated that the proposed test sequence be changed.

To reduce costs associated with loading and unloading test vehicles, Bosch requested that the braking-in-a-curve test be performed following the loaded-to-GVWR parking brake test, with the loaded-to-GVWR braking-in-a-curve test followed by the lightly loaded braking-in-a-curve test, for both hydraulic- and air-braked single-unit vehicles. Bosch also stated that it appeared that the agency had not considered the costs incurred by different phases of the test sequence requiring loading and unloading of the test vehicle. Bosch requested that the test sequence be changed to eliminate the requirement that empty vehicles be loaded solely for the purpose of conducting the braking-in-a-curve test after brake burnishing. Ford requested that if the agency decided to drop the loaded-to-GVWR braking-in-a-curve test, the test sequence be changed so that burnish and loaded-to-GVWR straight-line stops be conducted first, followed by braking-in-a-curve tests in the lightly-loaded condition, followed by lightly-loaded straight-line stops. In Ford's view, this sequence would eliminate one loading and unloading cycle and improve test efficiency.

One manufacturer, Mitsubishi, commented that the requirements proposed for the force and timing of brake pedal applications during the braking-in-a-curve test are too stringent. The proposal specified that a brake pedal force of 150 lbs. be achieved within 0.2 second from the initial application of force to the brake control (brake pedal) and that this minimum force be maintained for the duration of the stop. Mitsubishi believes that this application time would be difficult to achieve. The company provided test data from tests conducted on single unit trucks showing that test drivers could achieve 150 lbs. of pedal force within 0.2 seconds in only three out of 10 sample stops.

TMA and NTEA criticized our proposal as imposing significant test burdens and costs on small businesses beyond what those entities should reasonably be expected to bear. These commenters are concerned that final stage manufacturers and alterers may not be able to rely on the certification of an incomplete vehicle manufacturer to the extent portrayed by the agency in proposing the new requirements, particularly since many trucks are configured for highly specialized applications. Moreover, TMA argued that since NHTSA is proposing performance requirements for all classes of vehicles, it should consider removing the existing ABS equipment requirements. TMA stated these equipment requirements are unduly restrictive and may impede

[3] NHTSA has published a final rule (66 FR 64154) amending FMVSS No. 121 by incorporating the 1,000 lbs. rollbar provision.

development of improved ABS systems. NTEA stated that the proposal should be abandoned on the basis that there are no additional benefits attained by adding the proposed test procedure.

In regard to costs, TMA argued that in preparing the proposal, NHTSA tested only the most common two- and three-axle truck configurations (*i.e.*, 4 x 2 and 6 x 4), and has not adequately addressed the problems posed by other axle configurations. As aftermarket axles are often added to incomplete vehicles—which can cause a vehicle to fall outside of the Incomplete Vehicle Document (IVD) parameters specified by the incomplete vehicle manufacturer—final stage manufacturers will bear additional responsibility for certification. TMA stated that low-volume, special configurations may need to be excluded from this portion of the standard, and believes that it is premature to conclude that the proposal is practicable for all single-unit trucks and buses. TMA also believes the agency has significantly underestimated the cost of performing stand-alone braking-in-a-curve tests on previously certified vehicles. TMA stated that stand-alone testing will require shipping vehicles to a test site, installation of new brake system parts, burnishing, loading and unloading, charges for facilities, drivers, mechanics and test engineers as well as instrumentation support and reporting. The organization estimated that stand-alone braking-in-a-curve testing costs will average between $4,500 and $6,000 per test and a full FMVSS No. 105 or 121 certification will cost $10,000 to $13,000.

NTEA also believes that pass-through certification requirements supplied by incomplete vehicle manufacturers will be so restrictive that pass-through certification will not be available and that small companies would not have the means to conduct certification testing. NTEA stated that a final stage manufacturer could ensure compliance only through actual testing. In NTEA's view, the added cost of this testing will be prohibitive. Therefore, NTEA contends that final stage manufacturers would be compelled either to cease operations or choose not to test and risk a host of liabilities. NTEA further argues that the agency has repeatedly taken the position that alternatives to actual compliance testing, such as engineering analyses, computer simulations, or group testing through trade associations, may not suffice as evidence of the due care required for certification.

DaimlerChrysler referred to what it believes to be errors in the agency proposed changes to FMVSS No. 105. The company stated that the proposed regulatory text deleted S7.8 from the list of test procedures and sequences, and inadvertently added S7.11. DaimlerChrysler also believes that the words ''except for vehicles with a GVWR greater than 10,000 lbs.'' were inadvertently deleted from S7.5(b), and that the word ''must''—proposed in lieu of the current ''shall'' in S7—should be retained. DaimlerChrysler also noted that the word ''control'' was deleted from the phrase ''transmission selector control'' in S7 and recommended that the word ''control'' be retained. Finally, DaimlerChrysler indicated that while it prefers retaining the existing language for S5.7(b), which governs test speeds for each category of vehicle for the second effectiveness test, that the existing language of S5.7(b) is also incorrect

V. Final Rule

This final rule adopts the amendments to FMVSS No. 105 and FMVSS No. 121 proposed in the December 21, 1999 NPRM with several modifications. First, because the agency agrees with those commenters who argued that the lightly loaded test condition is the most severe test of an ABS system in a braking-in-a-curve test, the final rule eliminates the proposed requirement that testing include braking runs by a vehicle in a loaded-to-GVWR condition. The final rule also modifies the proposed test sequence to reflect the elimination of the loaded-to-GVWR condition requirement and to simplify testing. We are also modifying the requirements for the full brake application used in the braking-in-a-curve test and making a number of corrections to the regulatory text.

The most significant modification to the proposal is our decision to eliminate the requirement that the braking-in-a-curve test be performed with the test vehicle in a lightly loaded and heavily loaded configuration. The comments submitted in response to the NPRM favored elimination of the requirement that vehicles be tested in a loaded-to-GVWR condition. These commenters argued that the brakes on a lightly loaded vehicle are generally much more likely to lock on a low friction surface than those on an identical vehicle with a heavy load.

The agency's own testing and data submitted by TMA indicate that the lightly-loaded test condition has a lower margin of compliance than tests in the loaded-to-GVWR condition. In those few cases in which the loaded-to-GVWR test condition resulted in a lower margin of compliance, the margin of compliance was still quite large for the lightly-loaded condition. These tests and data demonstrate that the loaded-to-GVWR test offers little additional information about a vehicle's ABS performance beyond what can be shown by just using the lightly-loaded test.

In addition, the agency agrees with the observations of several commenters that there is a risk of vehicle rollover while conducting the braking-in-a-curve test with a loaded-to-GVWR vehicle unless a low center-of-gravity loading scheme is required. Developing and implementing a uniform low center-of-gravity scheme for single-unit vehicles would be difficult given the large number of single-unit truck configurations. Use of a higher center-of-gravity load increases concerns about roll stability. During the maximum drive-through speed test, which determines the speed at which the braking-in-a-curve test is conducted, the test vehicle will depart from the test lane if the driver exceeds the maximum drive through speed of the vehicle for that road surface condition. If this occurs, the test vehicle may move laterally onto a wet asphalt surface with a higher coefficient of friction (PFC 0.8). In these conditions, a vehicle loaded so that it has a high center of gravity could become unstable and rollover. The HDBMC offered its view that the agency should specify a 32-inch center-of-gravity height for any ballast added to create a loaded condition for any agency braking tests, including the proposed test. We note first that as the agency is not specifying that the braking in a curve test be performed in a loaded-to-GVWR condition, this eliminates HDBMC's concerns for that test.

While the agency is not including the fully-loaded-to-GVWR braking-in-a-curve test for single-unit vehicles in this final rule, it will keep this test requirement in FMVSS No. 121 for truck tractors. Reasons for keeping this requirement include the large variation in vehicle weight of unladen tractors (bobtail) to fully-loaded-to-GVWR tractors; the large contribution of the tractor in providing braking force when a loaded semi-trailer is coupled to the tractor; and the articulated configuration of the tractor and semitrailer that results in the trailer contributing to the lateral force on the tractor drive wheels during a braking-in-a-curve test. In addition, since loading a tractor to GVWR is accomplished by coupling a loaded control trailer to the tractor, the labor effort for loading and unloading is minimal compared to single-unit vehicles.

This final rule also modifies the test sequence. We note that our proposed test sequence, which is already in effect for truck tractors, is based on several

factors. The braking-in-a-curve test is placed early in the sequence so re-running the required straight line tests need not be done if the vehicle does not pass the braking-in-a-curve test. In addition, placing the braking-in-a-curve test early in the sequence avoids performing the braking-in-a-curve test with tires that may have developed flat spots on non-ABS controlled wheels during other tests. Although these flat spots will not appear if all wheels of a vehicle are controlled by ABS, there is no requirement that vehicles be so equipped. NHTSA must assume that compliance testing may encompass vehicles that do not have ABS controlling all their wheels. However, placing the braking-in-a-curve test near the beginning of the test sequence when the vehicle has to be tested in a loaded-to-GVWR and lightly-loaded condition, requires that the vehicle be loaded, tested in the curve, unloaded, tested in the curve and then loaded again for straight line tests. Compared to tractors, where the loading and unloading involves attaching or uncoupling a trailer, the loading and unloading of vehicles is more time consuming, particularly for buses where weights have to be placed in each seating position.

Our decision to require the braking-in-a-curve test for single unit vehicles only in the lightly loaded condition eliminates the need for loading and unloading for the braking-in-a-curve test. However, as some of the commenters observed, other changes to test sequences could reduce test burdens without compromising safety. Changing the FMVSS No. 105 test sequence to perform the braking-in-a-curve after the lightly-loaded parking brake test would reduce the unloading/loading and loading/unloading cycles in the entire test sequence from four to two. Changing the test sequence for single unit vehicles in FMVSS No. 121 so that the braking-in-a-curve test is performed after the loaded-to-GVWR parking brake tests would reduce the unloading/loading and loading/unloading cycles from three to one. As these changes to the test sequences would reduce test burdens and not compromise safety, this final rule revises the test sequences in FMVSS No. 105 so the braking-in-a-curve test is performed after the lightly loaded parking brake test and incorporates a test sequence for single unit vehicles in FMVSS No. 121 specifying that the braking-in-a-curve test is performed after the loaded-to-GVWR parking brake tests.

One commenter, Mitsubishi, submitted data to support its argument that NHTSA's proposed specifications for the brake application used in the FMVSS No. 105 braking-in-a-curve test were too stringent. As indicated above, the company argued that our proposal that a brake pedal force of 150 lbs. be achieved within 0.2 second from the initial application of force would be impractical. Data from testing performed by Mitsubishi using test drivers in single unit trucks indicated that a pedal force of 150 lbs. was achieved in 0.2 seconds or less in only three out of ten stops. Mitsubishi suggested that a 0.5 second application time is more practicable.

NHTSA agrees that it is difficult to reach the required application pressure within 0.2 second with a test driver. However, the agency believes that a 0.5 second application time is too slow. The Mitsubishi data show that the application time for the ten stops ranged from 0.18 to 0.31 second. The data also show that the 150 lbs. threshold was exceeded significantly in every case within 0.5 second of the initial application. Our review of the Mitsubishi data indicates that a test driver is able to reach 150 lbs. of force within 0.3 second of the initial application. Accordingly, this final rule specifies that a full brake application for the braking-in-a-curve test consists of an application where 150 lbs. of force is applied to the brake control within 0.3 seconds of the initial application of force to the brake control.

Finally, NHTSA is making a number of changes to the regulatory text to resolve errors and clarify the new requirements. As proposed in the NPRM, S5.1.7 of FMVSS No. 105 stated that the braking-in-a-curve test must be conducted at lightly-loaded vehicle weight plus up to 500 lbs. to allow for a test driver and instrumentation. However, S4 of FMVSS No. 105 already included a definition of lightly-loaded vehicle weight (for vehicles over 10,000 lbs. GVWR) with an allowance for 500 lbs. for the test driver and instrumentation. As the definition of ''lightly-loaded'' already includes an allowance for the test driver and instrumentation, this final rule deletes the redundant language in S5.1.7. DaimlerChrysler's comments indicated that the agency inadvertently deleted S7.8 from the list of test procedures and sequences in FMVSS No. 105, and inadvertently added S7.11 to the list. NHTSA agrees and is correcting the errors in the final rule. To address other errors noted by DaimlerChrysler, the final rule inserts the phrase ''except for vehicles with a GVWR greater than 10,000 lbs.'' in S7.5(b), the words ''shall'' and ''control'' in S7, and in S5.7.(b) modifies the table or test speeds for each category of vehicle for the second effectiveness test.

The agency is making other minor technical or clarifying changes based on its own review. The first sentence of S6.1.1 referencing lightly-loaded braking tests is also amended to include a reference to the braking-in-a-curve test for vehicles over 10,000 lbs. GVWR and S6.1.2, which identifies how the 500 lbs. of weight allowed for the test driver and instrumentation is to be placed in the vehicle, is also modified from the language of the proposal. The text of S6.9.2(a), which specifies the test surface for stopping distance tests in FMVSS No. 105, is also being revised to clarify that this specification does not include the stability and control while braking test in S6.9.2(b). S7 is revised in the final rule to accommodate the insertion of the stability and control test in S7.5(a), and references to S7.5 in the test procedure and sequence are being changed to S7.5(b). The final rule also deletes the proposed language of S5.3.6.2(a) of FMVSS No. 121—indicating that the vehicle is to be loaded to its GVWR in proportion to its GAWRs —as this specification is already included in S6.1.1 under S6, Road Test Conditions.

In limiting the modifications to its original proposal to those items described above, the agency is rejecting a number of changes suggested by the commenters. Advocates stated that the characteristics of the roadway specified for the braking-in-a-curve test do not approach worst-case operating conditions and that few vehicles properly equipped with ABS would fail the proposed braking-in-a-curve test. NHTSA disagrees that the braking-in-a-curve course is not demanding, since disabling the ABS on single-unit trucks and buses would likely result in these vehicles departing the lane during a full effort brake application. The agency believes that the proposed test configuration is sufficiently rigorous to evaluate the safety performance of ABS.

DaimlerChrysler requested that compliance with the braking-in-a-curve test be determined on the basis of whether any tire point-of-road contact leaves the test lane rather than any part of the vehicle leaving the roadway. The company argued that the latter measure is unclear and should not be applied to vehicles with large rear overhangs. NHTSA believes that the measure of compliance is clear as it stands and well understood to mean that in the plan view (view from the top looking down), no part of the vehicle shall pass outside of the 12-foot lane during the stop. As currently specified in the FMVSS No.

121 test procedure, the test driver is instructed to start each braking-in-a-curve maneuver with the vehicle in the center of the lane. The test lane is marked with cones placed at 20-foot intervals that are tall enough to contact the body of the test vehicle if the body swings outside of the lane. This method has proved sufficient in determining if the vehicle remains in the lane. Moreover, agency testing on vehicles with a variety of overhangs indicates that a vehicle that is maintaining traction and control will not move laterally far enough for the rear of the vehicle to leave the traveled lane.

Most importantly, the purpose of the braking-in-a-curve test is to represent a driving situation that might be encountered on a public road during a panic brake application. We believe that no part of the vehicle including a rear overhang should encroach on another travel lane. If the agency permitted the rear wheels of a vehicle to touch the outside of the 12-foot wide lane during the braking-in-a-curve test then the rear overhang would be outside of the travel lane and could pose a crash threat to other vehicles when that vehicle is operated on public roads.

DaimlerChrysler also requested that NHTSA delete the requirement that the proposed braking-in-a-curve road surface be ''wet.'' The NPRM proposed that the braking-in-a-curve test be performed on a wet level surface having a peak friction coefficient (PFC) of 0.5. DaimlerChrysler indicated that the properties of test surface are adequately addressed by the command that it have a PFC equal to 0.5 when measured by a specific procedure. In DaimlerChrysler's view, if the PFC is correct, the pavement could be dry or wet. We do not agree with DaimlerChrysler's position. The procedure used for measuring the PFC of the test surface—ASTM Method E1337–90—requires use of a wetted surface. If the surface must be wet to determine its coefficient of friction for testing, it must also be wet when testing occurs. NHTSA also believes that deleting the word ''wet'' from FMVSS No. 105 would lead to confusion, since it would not be clear if the vehicle test should be conducted with the test surface wetted or dry.

Both NTEA and TMA voiced a number of objections to the agency proposal. As we observed above, NTEA urged the agency to terminate this rulemaking on the basis of its argument that no additional benefits are realized by adding the proposed test procedure to FMVSS No. 105 and FMVSS No. 121. Beyond that, NTEA objected to the additional costs and burdens imposed on final stage manufacturers by the proposal, arguing that pass-through certification will not be available and that their member companies do not have the means to conduct certification testing. NTEA contends that a final stage manufacturer can only be sure of compliance through actual testing. TMA raised similar objections to the costs imposed on final stage manufacturers by the proposal and argued that NHTSA has underestimated the costs and burdens that the regulations imposed on this segment of the industry. TMA also argued that adoption of the performance requirements for single unit vehicles would allow NHTSA to remove the existing equipment requirements for ABS from FMVSS No. 105 and FMVSS No. 121.

It is NHTSA's position that adding performance requirements for single unit trucks is necessary and desirable. NHTSA does not claim that additional safety benefits above those projected in the agency's Final Economic Assessment (FEA) for the 1995 final rule establishing the ABS requirements will be attained solely from implementing a braking-in-a-curve test for single-unit vehicles.[4] As detailed in that FEA, NHTSA estimated that the use of ABS on all heavy vehicles would help prevent between 320 and 506 fatalities, between 15,900 and 27,413 injuries, and between $ 458 million and $ 553 million of property damage each year. These benefits assumed that ABS units installed on single-unit vehicles, which were not then subject to the braking-in-a-curve test, would be as effective as those installed on truck tractors. Therefore, now adding the braking-in-a-curve test for single unit vehicles does not modify those benefits.

Adding this performance test is, in our view, necessary to ensure those previously calculated benefits are realized. NHTSA has encountered several instances in which ABS systems that met equipment requirements did not meet the braking-in-a-curve test. As we explained in the 1995 ABS final rule, the braking-in-a-curve test provides an important check of ABS performance. Merely requiring ABS systems to meet the ABS definition does not ensure that an ABS system will provide an acceptable level of performance.

NHTSA does not agree with TMA's contention that the adoption of the braking-in-a-curve test for single unit vehicles eliminates the need for the ABS equipment requirements. As we discussed in the 1995 ABS final rule, we regard the braking-in-a-curve requirement as a complement to the ABS equipment requirement, and not as an alternative to it. (60 FR 13231) The braking-in-a-curve test alone can neither evaluate the overall effectiveness of ABS nor ensure the use of a closed-loop system. Such an evaluation would require an array of performance requirements such as split mu tests, surface transition tests, and stopping distance performance tests. However, the braking-in-a-curve test is an objective, repeatable, and practicable procedure for evaluating the performance of a vehicle's ABS, and will be used by the agency to complement the ABS equipment requirement.

The agency is not aware of, and TMA has not provided any data on, braking systems that provide stability and control during the braking-in-a-curve test that do not use a closed-loop control strategy as required by the ABS equipment requirements. Thus, the agency has decided to retain the ABS equipment requirements in FMVSS Nos. 105 and 121.

We have also concluded that these requirements do not stifle innovation. Moreover, TMA did not provide specific examples of how the existing equipment requirements would prevent the use of new technologies. The agency is aware of new technologies such as the electronically-controlled braking system (ECBS) that has been developed by the industry, and is involved through the Society of Automotive Engineers in learning more about the characteristics, mechanical and electronic design features, and performance of ECBS. If appropriate, future rulemaking efforts can be undertaken to accommodate these systems in FMVSS No. 121. However, the agency sees no reason to consider deletion or modification of the ABS equipment requirements from FMVSS Nos. 105 and 121 until it has specific knowledge on how, or if, existing requirements impact on the use of alternate braking system technologies.

TMA also stated that the proposed braking-in-a-curve test is not practicable. In TMA's view, NHTSA has not tested enough different axle combinations on single unit trucks to conclude that the proposed test is suitable for vehicles with different combinations of drive axles and ''tag'' and ''pusher'' axles. NHTSA acknowledges that it has not performed the braking-in-a-curve test with more than the most common axle combinations. However, it is the agency's position that it need not do so.

[4] It should be noted that one commenter, Advocates, performed an analysis indicating that safety benefits would accrue for the establishment of ABS performance requirements for single-unit trucks.

Testing to date indicates that as long as wheel lock-up is prevented on at least the rearmost axle and the steer axle, the vehicle will remain stable during the braking-in-a-curve maneuver. None of the commenters, including TMA, submitted data to the agency indicating that NHTSA's testing on more conventional axle configurations is not applicable to other axle arrangements. Accordingly, NHTSA believes that the braking-in-a-curve test is practicable for less common axle configurations.

TMA and NTEA both objected to the burdens that adoption of the single unit braking-in-a-curve test would allegedly impose on final stage manufacturers. The agency's February 1995 FEA contained calculations of compliance costs for both the stopping distance and ABS requirements of the 1995 Final Rule. Using these costs as a starting point, the December 1999 NPRM contained an estimate for the cost of implementing the braking-in-a-curve test for single-unit trucks and buses. A stand-alone braking-in-a-curve test was estimated to cost $1500, and the incremental cost to incorporate the braking-in-a-curve test into a complete Standard No. 105 or 121 compliance test was set at $1,000. The cost per air-braked vehicle, when distributed across the affected population, was estimated to be about $18. In the later years, it was estimated that 30 compliance tests would be required annually, for a total cost of $360,000 ($12 \times 30 \times \$1,000$). The cost per air-braked vehicle in those later years would be about $6.

In the case of hydraulic-braked single-unit vehicles, which were already subject to the existing test requirements of Standard No. 105, the 1995 FEA concluded that the incremental cost of a braking-in-a-curve test would be $1,000 per test. The FEA estimated that 10 manufacturers would have to complete 20 compliance tests each, the total cost for these vehicles would be approximately $200,000.00. Given annual sales of hydraulically braked medium and heavy trucks of approximately 195, 000 vehicles, we estimated the cost per vehicle for the braking-in-a-curve test for hydraulically braked vehicles at about $1. This cost per vehicle would be the same in the later years if manufacturers chose to test for each model year.

TMA estimates that stand-alone braking-in-a-curve testing costs between $4,500 and $6,000 per test. TMA states that a typical burnish alone costs approximately $1,500 while a full FMVSS No. 105 or 121 certification test costs $10,000 to $13,000. TMA did not provide a detailed breakdown of these costs, so it is difficult for NHTSA to ascertain how a braking-in-a-curve test, which is not disproportionately demanding in comparison to other tests in the sequence, could account for forty to fifty percent of the total cost of a complete FMVSS No. 105 or 121 certification test. TMA's comments also did not indicate what its members were currently expending in performing testing substantially similar to the test required by this final rule. Because, according to TMA's comments, TMA members are already using the SAE J1626 test procedure, TMA urged the agency to take steps to ensure that the FMVSS No. 121 and 105 braking-in-a-curve test conform as closely as possible to that test.

A review of the SAEJ1626 test procedure indicates that it contains a braking-in-a-curve test that is virtually identical to the braking-in-a-curve contained in this final rule. Therefore, it appears, to the extent that TMA members are already performing the SAE J1626 test, that the promulgation of this final rule should not impose additional test costs. If those manufacturers are not currently performing the SAE braking-in-a-curve test, the agency believes that TMA's claimed additional costs for adding the braking-in-a-curve test to FMVSS No. 105 and 121 are overstated.

Our own inquiries with test facilities indicate that adding the braking-in-a-curve test to the existing NHTSA test sequence should impose additional costs of approximately $1000, particularly since we are now specifying that the braking-in-a-curve test be performed only in the lightly loaded condition. In the agency's view, TMA's projected test costs of $4500 to $6000 for adding the braking in a curve test would be reasonable only in the situation where a vehicle has not been tested to SAE J1626, has already been tested to Standard No. 105 or 121, and was being transported to a test facility only for testing to the braking-in-a-curve test with newly-installed and freshly burnished brakes.

The NPRM indicated an estimated cost of $18 per air-braked single-unit vehicle for manufacturers to include stand-alone braking-in-a-curve testing in the first year and $6 in later years. In the case of hydraulically-braked vehicles, this figure is $1 per year for the first year and thereafter. As noted above, NHTSA does not agree that TMA's claimed costs are reasonable, particularly in light of the widespread use of the SAE J1626 test. However, if TMA's cost estimates were applied, then the per-vehicle cost could be as high as $54 to $72 per vehicle, provided the FEA and NPRM assumptions are valid on the number of tests to be conducted. However, as indicated above, NHTSA believes that testing costs as high as those projected by TMA represent an unlikely worst case and that the agency's projection are much more representative of actual conditions. We also note that the cost of ABS components and complete systems has declined approximately 30 percent in the 7 years since the cost-benefit analysis contained in the FEA was performed, thereby reducing the overall cost of compliance.

NTEA also commented on the costs of the agency proposal. The organization contends that the costs of complying with the braking-in-a-curve requirement would be particularly burdensome for its members. NTEA describes these members as small businesses that sell and install truck bodies on incomplete vehicles. Some of these vehicles are obtained from incomplete vehicle manufacturers in a nearly complete condition such as a chassis-cab, *i.e.*, a truck that is complete except for a body. In the case of a chassis-cab, the final stage manufacturer typically adds a body to the portion of the vehicle behind the cab to produce a completed truck. Other configurations, such as cutaways, stripped chassis or chassis cowls require substantially more work before the vehicle is complete. NTEA believes that as much as 20 percent of all single unit trucks built in multiple stages are based on cutaways, stripped chassis or chassis cowls. According to the organization, when these types of incomplete vehicles are used, the final stage manufacturer can only certify the completed vehicle through testing. NTEA also stated that even where a chassis cab or other incomplete vehicle that has been certified by the incomplete vehicle manufacturer, the particular application for the vehicle may require sufficient changes so the final stage vehicle no longer complies with the specifications contained in the incomplete vehicle manufacturer's certification. In both cases, NTEA commented that the final stage manufacturer would then face the practical and financial obstacles of obtaining and paying for the required compliance tests.

NHTSA agrees that final stage manufacturers may not be able to rely on a certification provided by an incomplete vehicle manufacturer or that such a certification may not exist. However, it is our view that NTEA's claims are overstated, and like those presented by the TMA, present a worst-case scenario as the norm. We note first that chassis-cabs, for which pass through certification is available,

represent a significant portion of the affected population. For instance, in the 1987 through 1989 model years, chassis-cabs represented 86 percent of sales of incomplete trucks with a GVWR above 10,000 pounds. Based on inquiries with manufacturers, NHTSA believes that this percentage is now much larger. Finally, even where pass-through certification is not available, incomplete vehicle manufacturers provide certification data for specific Federal motor vehicle safety standards that can be used by the final stage manufacturer to certify compliance without having to do any testing. Examination of this documentation shows that final stage manufacturers are usually provided with an envelope within which the vehicle center-of-gravity can be located and the axle loadings that can be used in order for the vehicle to meet either Standard No. 105 or Standard No. 121. Incomplete vehicle manufacturers strive to make this information as complete as possible in order to serve their customers. Therefore, NHTSA believes that occurrences where final stage manufacturers may not rely on pass-through certification or vehicle certification data from the incomplete vehicle manufacturer will be rare and would represent a significantly smaller percentage of the affected vehicles than the 20 percent claimed by NTEA.

NTEA also argues that the tremendous variety of vehicle configurations produced by its members compels the conclusion that NHTSA cannot require these member companies to perform the braking-in-a-curve test. This argument is based on two assertions. The first is that its members who do not use chassis-cabs and do not have pass-through certification have no choice but to perform compliance testing to demonstrate compliance with FMVSS Nos. 105 and 121. The second is that for those manufacturers, the costs of testing are so great as to make it impracticable. As testing must be both objective and practicable and NTEA's members have no choice but to test, the costs of the braking-in-a-curve test, in NTEA's view, preclude use of the test.

The NTEA position relies heavily on the decisions in two prior challenges the agency final rules, *Paccar, Inc.* v. *National Highway Traffic Safety Administration,* 573 F.2d 632 (9th Cir.), cert. denied, 439 U.S. 862, 99 S. Ct. 184, 58 L. Ed. 2d 172 (1978) and *NTEA* v. *National Highway Traffic Safety Administration,* 919 F.2d 1148, 1152–53 (6th Cir. 1990) where the courts rejected the agency's argument that compliance could be demonstrated by a showing of due care when tests are not performed. In both cases, NHTSA had conceded that the required tests were impracticable. This left the courts to consider the question of whether the due care standard provided sufficient guidance to manufacturers when no compliance test was available. The *Paccar* court, describing the due care standard as ''amorphous,'' found that NHTSA's ''suggestions'' of what constituted due care to be too imprecise to assist those trying to meet the standard at issue. In the *NTEA* case, the court followed the earlier *Paccar* decision and held that NHTSA could not impose a due care requirement on final stage manufacturers for whom the designated test was impracticable. NTEA argues that imposing the braking-in-a-curve test to final stage manufacturers is equally impracticable as the tests involved in both the *Paccar* and *NTEA* decisions. As the agency has not proposed any alternative to the test other than to establish compliance through due care, NTEA contends that NHTSA cannot now apply the braking-in-a-curve test to final stage manufacturers.

NHTSA does not agree with NTEA's analysis. We note first that NTEA did not provide any data supporting its position that the braking-in-a-curve test is so costly as to be impracticable. In fact, NTEA's comments do not contain any cost estimates for this test. In the absence of any cost estimates, NTEA stresses that the tremendous variety of vehicles made by final stage manufacturers who cannot rely on pass-through certification supports the premise that the braking-in-a-curve test is impracticable. According to NTEA, requiring final stage manufacturers to perform the braking-in-a-curve test is tantamount to requiring that every vehicle produced by these manufacturers must undergo this test. However, as is the case with cost estimates for the test itself, NTEA does not provide any data on the production of final stage manufacturers, including how many manufacturers produce models in extremely low volumes. In some instances, final stage manufacturers will be able to spread the cost of testing over the production run of similar vehicles. In other instances, manufacturers may have to perform testing of a single vehicle. Unlike the tests involved in both the *Paccar* and *NTEA* cases, the braking-in-a-curve test simply adds a new component to a braking test sequence that manufacturers are already required to perform. This incremental addition to the existing test sequence does not, in contrast to the test in the *NTEA* case, damage the test vehicle.

We estimate that the incremental cost of performing the braking-in-a-curve test to be approximately $1000.00. Manufacturers, even final stage manufacturers producing specialized vehicles on a bare chassis, rarely produce just one example of a particular design. The incremental cost of the braking-in-a-curve test is therefore likely to be spread over a production run of many vehicles. Even in the case of a production run of just one vehicle, we do not believe that this additional test cost is so high as to make the braking-in-a-curve test impractible, particularly since a buyer seeking a highly specialized vehicle is likely to be willing to pay more for the special features it offers.

NHTSA also believes that final stage manufacturers are capable of determining what constitutes the exercise of due care when certifying a vehicle and may rely on the exercise of that care in establishing certification without testing. While we must concede that NHTSA cannot make a single pronouncement of what constitutes due care for every circumstance in which a manufacturer certifies a vehicle, manufacturers, even final stage manufacturers, should be able to make this determination themselves. Vehicle manufacturers, both large and small, must make similar determinations for liability purposes every day. In so doing, they are aided by the application of industry and professional standards of care.

Final stage manufacturers are also provided with considerable guidance by the incomplete vehicle documents and body builder's guides provided by chassis manufacturers. Even where pass-through certification cannot be used, incomplete vehicle documents provide assurance of compliance if the completed vehicle meets the axle loading and center-of-gravity specifications provided by the incomplete vehicle manufacturer. If the final stage manufacturer stays within the guidelines provided by the incomplete vehicle manufacturer, the certification information supplied with the chassis can be used to certify compliance without doing any actual testing. Moreover, each chassis-cab manufacturer has an incentive to make the requirements for pass-through certification as broad as possible. The final stage manufacturer can then select from a variety of readily-available chassis-cab configurations and options (*e.g.*, wheelbase, front and rear axle ratings) that can predictably meet the pass-through certification criteria.

When a final stage manufacturer completes a vehicle in a way that takes

the vehicle outside the specifications of the IVD, then it cannot rely on the IVD in certifying compliance of the vehicle. Absent actual testing, alternate means of certification, such as engineering analysis or computer simulation, may be sufficient to allow a final stage manufacturer to certify compliance in good faith. For example, the manufacturer or supplier of the lift axle, upon request from a final stage manufacturer, may provide service brake retardation force characteristics for the axles it sells, based on dynamometer or other testing conducted by the axle manufacturer, which can be applied through simple calculations to determine compliance with service brake stopping distance requirements. That supplier can also provide grade-holding or drawbar test data to determine, using simple calculations, that the parking brake requirements in FMVSS No. 121, for example, are met at the increased GVWR as altered by the final stage manufacturer. Other braking requirements in the FMVSSs, including emergency brake stopping distance and brake actuation and release timing, can similarly be met by performing engineering analysis, working with chassis manufacturers and brake system and axle suppliers, and installing suitable equipment, to permit the final stage manufacturer to certify compliance with FMVSS Nos. 105 or 121. In many cases, such certification can be achieved without having to conduct actual road testing, or in some cases, with only portions of road or laboratory testing required (such as hiring a consultant to perform brake application and release timing tests at the final stage manufacturer's facilities).

NHTSA recognizes that there may be unusual vehicle configurations for which complete data are not available from vehicle or component suppliers that would enable an engineering analysis to be used for certification purposes. In such cases, computer simulations or actual road testing may be necessary for certification. Final stage manufacturers should consider these facts before deciding to build unusual vehicle configurations, since it is predictable that some vehicles cannot be certified using engineering analyses prior to purchasing a chassis, body, or other equipment.

VI. Preselection of Test Condition Option

Many FMVSSs contain alternative compliance options from which vehicle manufacturers may choose. In this final rule, there is an option to use a rollbar structure of up to 1,000 pounds for vehicles tested in the lightly-loaded condition. This has resulted in some problems when the agency conducts its compliance tests. For example, in a recent case, a vehicle was tested to FMVSS No. 135 and did not meet one of the requirements of that standard. When contacted about the non-compliance, the vehicle manufacturer stated that the vehicle should be compliance tested to FMVSS No. 105, since at that time that particular vehicle could be manufactured to either standard at the vehicle manufacturer's option. Thus, the agency was faced with having to test to two standards to determine which one applied.

To avoid confusion in the future, the agency is now conducting a review of compliance test condition options and anticipates that it will propose regulations to address this issue. However, until such rules are proposed and adopted, our practice will be to address optional test conditions in each standard. Thus, the agency is adding a statement to the general test conditions for both FMVSS No. 105 (S6.15) and 121 (S6.1.16) that directs a vehicle manufacturer to identify which option was selected for compliance test purposes. The agency does not believe that this makes any of the standard's requirements more stringent. Instead, it removes uncertainty from the compliance test program and reduces test costs to the agency.

VII. Effective Date

The amendments contained in this final rule become effective October 10, 2003. With the exception of vehicles built in two or more stages, the braking-in-a-curve test requirements contained in this final rule apply to vehicles built on or after July 1, 2005. Vehicles built in two or more stages must meet the braking-in-a-curve test's requirements on or after July 1, 2006. Single unit trucks and buses are built in a wide variety of configurations to meet a diverse array of uses and needs. Many single unit trucks and buses are built to standard designs and configurations. However, many are specialty vehicles dedicated to specific purposes. Although anti-lock brake systems suitable for use in these vehicles are readily available, adaptation of these systems for particular applications will require sufficient leadtime to allow whatever development and testing may be needed. Moreover, as many single unit trucks and buses are manufactured in two or more stages, the agency notes that many final stage manufacturers are likely to rely on incomplete vehicle manufacturers to supply chassis that meet the new requirements. The agency has determined that the approximately two-year leadtime provided in this final rule provides sufficient time for intermediate stage manufacturers to develop complying incomplete vehicles in a sufficient number of configurations to meet the needs of final stage manufacturers. Finally, this final rule will make it necessary for some small final stage manufacturers to certify their vehicles with limited assistance from the intermediate vehicle manufacturer. The compliance date chosen by the agency affords these manufacturers sufficient time to take whatever steps may be required to meet the new requirements. Accordingly, the agency finds that good cause exists to make the compliance dates in this final rule effective more than one year after issuance.

VIII. Rulemaking Analyses and Notices

A. Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The 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 entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. The Office of Management and Budget did not review this rulemaking document under E.O. 12866. The document is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This document amends 49 CFR Parts 571.105 and 571.121 by extending the application of the existing braking-in-a-curve performance test for anti-lock

brakes to vehicles already required to be equipped with such brakes. By providing a compliance test, this final rule assures the realization of the benefits previously calculated when the requirement for installation of anti-lock brakes was issued in 1995. The compliance test contained in this final rule, which requires a vehicle to successfully negotiate a curved lane on a wetted low-friction surface, is identical to the existing agency test applicable to truck tractors, virtually identical to an existing Society of Automotive Engineers (SAE) test, and similar to other industry tests used to evaluate anti-lock brakes. Therefore, NHTSA believes that existing ABS systems, when properly installed and configured, will allow a vehicle to meet the requirements of the braking-in-a-curve test.

By extending the braking-in-a-curve test to non-articulated trucks and buses, this final rule adds a new road test requirement to an existing sequence of road tests for those vehicles. The costs of the new additional road test required by this final rule are (because the tests are identical) identical to the costs of requiring truck tractors to meet the same test. Based on our knowledge of this braking-in-a-curve test, the agency estimated the incremental cost of adding this new road test to the existing sequence of road tests for brakes to be approximately $1,000 per test. In most cases, this additional test cost will be spread over hundreds or thousands of vehicles. In instances in which the vehicle involved is a more specialized configuration, the cost of compliance testing, including the cost of including the braking-in-a-curve test in the existing road test sequence will be spread over fewer vehicles. Overall, NHTSA estimates that approximately 250,000 single unit trucks and 7,000 single-unit buses will be affected by this final rule. Testing costs were estimated at the time of the 1995 final rule to range from $1 to $18 per vehicle, depending on whether the vehicle has air brakes or hydraulic brakes and if the braking-in-a-curve test is as part of a full brake system compliance test or is performed alone.

When we promulgated the anti-lock brake requirements in 1995, the benefits of the anti-lock brake requirements were estimated to result in as many as 506 fewer annual fatalities, 27,413 fewer injuries and a reduction of property damage by as much as $553 million each year. The increased cost, which included the cost of anti-lock brakes and testing combined, was estimated to be $692 per vehicle. Almost all of that cost is for the brakes themselves. The cost of the brakes is attributable to the March 1995 final rule, not this one.

B. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Accordingly, the requirements of section 6 of the Executive Order do not apply to this final rule.

C. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, safety or health risks having a disproportionate impact on children.

D. Executive Order 12778

Pursuant to Executive Order 12778, ''Civil Justice Reform,'' we have considered whether this final rule will have any retroactive effect. We conclude that it will not have such effect.

Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) and certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule extends application of an existing performance test for anti-lock brakes to a class of vehicles that are already required to have anti-lock brakes. The performance test, known as the braking-in-a-curve test, previously applied only to truck tractors and this final rule simply requires that single unit (non-articulated) trucks and buses must meet the same test. The primary cost effect of the requirements will be testing costs and will be on manufacturers of single unit (*i.e.*, non-articulated) trucks and buses. Some single unit trucks and buses are produced by large manufacturers. Other single unit trucks and buses are produced in stages. In most cases, large manufacturers provide incomplete vehicles to smaller final stage manufacturers, who then produce the finished vehicle. Final stage manufacturers, those who use incomplete vehicles produced by larger manufacturers to produce specialty products, are generally small businesses. However, NHTSA believes that this final rule is not burdensome for final stage manufacturers. As eighty to ninety percent of the affected vehicles are completed from chassis-cabs where pass through certification is available, most final stage manufacturers will be able to rely on the prior certification and testing performed by an incomplete vehicle manufacturer and thus will not

need to incur additional costs. The remaining final stage manufacturers will be required to perform testing or take other steps to ensure that the vehicles they produce will meet the new performance requirements. These manufacturers will have a variety of means available to accomplish this, including access to test and other data performed by chassis manufacturers, trade groups and equipment manufacturers. Therefore, the agency has determined that this final rule will not have a significant impact on these small entities and has not prepared a regulatory flexibility analysis.

F. National Environmental Policy Act

We have analyzed this final rule amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not contain any new information collection requirements.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing 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 us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This final rule adds anti-lock brake system performance requirements and a performance test for single unit trucks to 49 CFR 571.105 and 49 CFR 571.121. The amendments add these new requirements to an existing regulatory scheme that already contains an identical test for truck tractors. The tests adopted in this final rule are identical in most respects to the provisions of Section 5.3 of the Society of Automotive Engineers (SAE) Recommended Practice J1626, Braking, Stability, and Control Performance Test Procedures for Air and Hydraulic Brake Equipped Trucks. Any differences between the provisions of this final rule and SAE J1626 are minor in nature and do not add significantly to the test burdens of manufacturers. Accordingly, to the degree that the final rule does not adopt a voluntary consensus standard, the agency believes that no explanation is necessary.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 21411, 21415, 21417, and 21466; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.105 is amended by revising S4 to add definitions of ''Full brake application'' and ''Maximum drive-through speed;'' by revising S5.1, S6.1.1, S6.1.2, S6.9.2, the introductory text of S7, S7.5, and Table 1; and by adding S5.1.7, S6.14 and S6.15, to read as follows:

§ 571.105 Standard No. 105, Hydraulic brake systems.

* * * * *

S4 Definitions.

* * * * *

Full brake application means a brake application in which the force on the brake pedal reaches 150 pounds within 0.3 seconds from the point of application of force to the brake control.

* * * * *

Maximum drive-through speed means the highest possible constant speed at which the vehicle can be driven through 200 feet of a 500-foot radius curve arc without leaving the 12-foot lane.

* * * * *

S5.1 Service brake systems. Each vehicle must be equipped with a service brake system acting on all wheels. Wear of the service brake must be compensated for by means of a system of automatic adjustment. Each passenger car and each multipurpose passenger vehicle, truck, and bus with a GVWR of 10,000 pounds or less must be capable of meeting the requirements of S5.1.1 through S5.1.6 under the conditions prescribed in S6, when tested according to the procedures and in the sequence set forth in S7. Each school bus with a GVWR greater than 10,000 pounds must be capable of meeting the requirements of S5.1.1 through S5.1.5, and S5.1.7 under the conditions specified in S6, when tested according to the procedures and in the sequence set forth in S7. Each multipurpose passenger vehicle, truck and bus (other than a school bus) with a GVWR greater than 10,000 pounds must be capable of meeting the requirements of S5.1.1, S5.1.2, S5.1.3, and S5.1.7 under the conditions specified in S6, when tested according to the procedures and in the sequence set forth in S7. Except as noted in S5.1.1.2 and S5.1.1.4, if a vehicle is incapable of attaining a speed specified in S5.1.1, S5.1.2, S5.1.3, or S5.1.6, its service brakes must be capable of stopping the vehicle from the multiple of 5 mph that is 4 to 8 mph less than

the speed attainable in 2 miles, within distances that do not exceed the corresponding distances specified in Table II. If a vehicle is incapable of attaining a speed specified in S5.1.4 in the time or distance interval set forth, it must be tested at the highest speed attainable in the time or distance interval specified.

* * * * *

S5.1.7 Stability and control during braking. When stopped four consecutive times under the conditions specified in S6, each vehicle with a GVWR greater than 10,000 pounds manufactured on or after July 1, 2005 and each vehicle with a GVWR greater than 10,000 pounds manufactured in two or more stages on or after July 1, 2006 shall stop from 30 mph or 75 percent of the maximum drive-through speed, whichever is less, at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway. Stop the vehicle with the vehicle at its lightly loaded vehicle weight, or at the manufacturer's option, at its lightly loaded vehicle weight plus not more than an additional 1000 pounds for a roll bar structure on the vehicle.

* * * * *

S6.1.1 Other than tests specified at lightly loaded vehicle weight in S7.5(a), S7.7, S7.8, and S7.9, the vehicle is loaded to its GVWR such that the weight on each axle as measured at the tire-ground interface is in proportion to its GAWR, except that each fuel tank is filled to any level from 100 percent of capacity (corresponding to full GVWR) to 75 percent. However, if the weight on any axle of a vehicle at lightly loaded vehicle weight exceeds the axle's proportional share of the gross vehicle weight rating, the load required to reach GVWR is placed so that the weight on that axle remains the same as a lightly loaded vehicle weight.

* * * * *

S6.1.2 For the applicable tests specified in S7.5(a), S7.7, S7.8, and S7.9, vehicle weight is lightly loaded vehicle weight, with the added weight distributed in the front passenger seat area in passenger cars, multipurpose passenger vehicles, and trucks, and in the area adjacent to the driver's seat in buses.

* * * * *

S6.9.2(a) For vehicles with a GVWR greater than 10,000 pounds, road tests (excluding stability and control during braking tests) are conducted on a 12-foot-wide, level roadway, having a peak friction coefficient of 0.9 when measured using an American Society for Testing and Materials (ASTM) E 1136 standard reference test tire, in accordance with ASTM Method E 1337–90, at a speed of 40 mph, without water delivery. Burnish stops are conducted on any surface. The parking brake test surface is clean, dry, smooth, Portland cement concrete.

S6.9.2(b) For vehicles with a GVWR greater than 10,000 pounds, stability and control during braking tests are conducted on a 500-foot-radius curved roadway with a wet level surface having a peak friction coefficient of 0.5 when measured on a straight or curved section of the curved roadway using an American Society for Testing and Materials (ASTM) E1136 standard reference tire, in accordance with ASTM Method E1337–90, at a speed of 40 mph, with water delivery.

* * * * *

S6.14 Special drive conditions. A vehicle with a GVWR greater than 10,000 pounds equipped with an interlocking axle system or a front wheel drive system that is engaged and disengaged by the driver is tested with the system disengaged.

S6.15 Selection of compliance options. Where manufacturer options are specified, the manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. Each manufacturer shall, upon request from the National Highway Traffic Safety Administration, provide information regarding which of the compliance options it has selected for a particular vehicle or make/model.

* * * * *

S7. Test procedure and sequence. Each vehicle shall be capable of meeting all the applicable requirements of S5 when tested according to the procedures and sequence set forth below, without replacing any brake system part or making any adjustments to the brake system other than as permitted in the burnish and reburnish procedures and in S7.9 and S7.10. (For vehicles only having to meet the requirements of S5.1.1, S5.1.2, S5.1.3, and S5.1.7 in section S5.1, the applicable test procedures and sequence are S7.1, S7.2, S7.4, S7.5(b), S7.5(a), S7.8, S7.9, S7.10, and S7.18. However, at the option of the manufacturer, the following test procedure and sequence may be conducted: S7.1, S7.2, S7.3, S7.4, S7.5(b), S7.6, S7.7, S7.5(a), S7.8, S7.9, S7.10, and S7.18. The choice of this option must not be construed as adding to the requirements specified in S5.1.2 and S5.1.3.) Automatic adjusters must remain activated at all times. A vehicle shall be deemed to comply with the stopping distance requirements of S5.1 if at least one of the stops at each speed and load specified in each of S7.3, S7.5(b), S7.8, S7.9, S7.10, S7.15 and S7.17 (check stops) is made within a stopping distance that does not exceed the corresponding distance specified in Table II. When the transmission selector control is required to be in neutral for a deceleration, a stop or snub must be obtained by the following procedures:

(a) Exceed the test speed by 4 to 8 mph;

(b) Close the throttle and coast in gear to approximately 2 mph above the test speed;

(c) Shift to neutral; and

(d) When the test speed is reached, apply the service brakes.

* * * * *

S7.5 (a) Stability and control during braking (vehicles with a GVWR greater than 10,000 pounds). Make four stops in the lightly-loaded weight condition specified in S5.1.7. Use a full brake application for the duration of the stop, with the clutch pedal depressed or the transmission selector control in the neutral position, for the duration of each stop.

(b) Service brake system—second effectiveness test. For vehicles with a GVWR of 10,000 pounds or less, or any school bus, make six stops from 30 mph. Then, for any vehicle, make six stops from 60 mph. Then, for a vehicle with a GVWR of 10,000 pounds or less, make four stops from 80 mph if the speed attainable in 2 miles is not less than 84 mph.

* * * * *

TABLE I.—BRAKE TEST PROCEDURE SEQUENCE AND REQUIREMENTS

Sequence	Test load		Test procedure	Requirements
	Light	GVWR		
1. Instrumentation check			S7.2	
2. First (preburnish) effectiveness test		X	S7.3	S5.1.1.1
3. Burnish procedure		X	S7.4	

TABLE I.—BRAKE TEST PROCEDURE SEQUENCE AND REQUIREMENTS—Continued

Sequence	Test load		Test procedure	Requirements
	Light	GVWR		
4. Second effectiveness test		X	S7.5(b)	S5.1.1.2
5. First reburnish		X	S7.6	
6. Parking brake	X	X	S7.7	S5.2
7. Stability and control during braking (braking-in-a-curve test)	X		S7.5(a)	S5.1.7
8. Third effectiveness (lightly loaded vehicle)	X		S7.8	S5.1.1.3
9. Partial failure	X	X	S7.9	S5.1.2
10. Inoperative brake power and power assist units		X	S7.10	S5.1.3
11. First fade and recovery		X	S7.11	S5.1.4
12. Second reburnish		X	S7.12	
13. Second fade and recovery		X	S7.13	S5.1.4
14. Third reburnish		X	S7.14	
15. Fourth effectiveness		X	S7.15	S5.1.1.4
16. Water recovery		X	S7.16	S5.1.5
17. Spike stops		X	S7.17	S5.1.6
18. Final inspection			S7.18	S5.6
19. Moving barrier test		X	S7.19	S5.2.2.3

* * * * *

■ 3. Section 571.121 is amended by revising S5.3, S5.3.6, S5.3.6.2 and Table 1; and by adding S6.1.17, to read as follows:

§ 571.121 Air brake systems

* * * * *

S5.3 Service brakes—road tests. The service brake system on each truck tractor shall, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, S5.3.4, and S5.3.6, when tested without adjustments other than those specified in this standard. The service brake system on each bus and truck (other than a truck tractor shall) manufactured before July 1, 2005 and each bus and truck (other than a truck tractor) manufactured in two or more stages shall, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, and S5.3.4 when tested without adjustments other than those specified in this standard. The service brake system on each bus and truck (other than a truck tractor) manufactured on or after July 1, 2005 and each bus and truck (other than a truck tractor) manufactured in two or more stages on or after July 1, 2006 shall, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, S5.3.4, and S5.3.6, when tested without adjustments other than those specified in this standard. The service brake system on each trailer shall, under the conditions of S6, meet the requirements of S5.3.3, S5.3.4, and S5.3.5 when tested without adjustments other than those specified in this standard. However, a heavy hauler trailer and the truck and trailer portions of an auto transporter need not met the requirements of S5.3.

* * * * *

S5.3.6 Stability and control during braking—trucks and buses. When stopped four consecutive times for each combination of weight, speed, and road conditions specified in S5.3.6.1 and S5.3.6.2, each truck tractor shall stop at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway. When stopped four consecutive times for each combination of weight, speed, and road conditions specified in S5.3.6.1 and S5.3.6.2, each bus and truck (other than a truck tractor) manufactured on or after July 1, 2005, and each bus and truck (other than a truck tractor) manufactured in two or more stages on or after July 1, 2006, shall stop at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway.

* * * * *

S5.3.6.2 Stop the vehicle, with the vehicle:

(a) Loaded to its GVWR, for a truck tractor, and

(b) At its unloaded weight plus up to 500 pounds (including driver and instrumentation), or at the manufacturer's option, at its unloaded weight plus up to 500 pounds (including driver and instrumentation) and plus not more than an additional 1000 pounds for a roll bar structure on the vehicle, for a truck, bus, or truck tractor.

* * * * *

S6.1.17 Selection of compliance options. Where manufacturer options are specified, the manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. Each manufacturer shall, upon request from the National Highway Traffic Safety Administration, provide information regarding which of the compliance options it has selected for a particular vehicle or make/model.

* * * * *

TABLE I.—STOPPING SEQUENCE

	Truck tractors	Single unit trucks and buses
Burnish	1	1
Stability and Control at GVWR (PFC 0.5)	2	N/A
Stability and Control at LLVW (PFC 0.5)	3	5
Manual Adjustment of Brakes	4	N/A
60 mph Service Brake Stops at GVWR (PFC 0.9)	5	2
60 mph Emergency Service Brake Stops at GVWR (PFC 0.9)	N/A	3
Parking Brake Test at GVWR	6	4
Manual Adjustment of Brakes	7	6
60 mph Service Brake Stops at LLVW (PFC 0.9)	8	7
60 mph Emergency Service Brake Stops at LLVW (PFC 0.9)	9	8
Parking Brake Test at LLVW	10	9
Final Inspection	11	10

* * * * *

Issued on July 31, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–20025 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 080503A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Spring Commercial Red Snapper Component

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

ACTION: Notice of Closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the spring portion of the annual commercial quota for red snapper will be reached on August 7, 2003. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective noon, local time, August 7, 2003, until noon, local time, on October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2003. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available spring commercial quota of 3.10 million lb (1.41 million kg) for red snapper will be reached when the fishery closes at noon on August 7, 2003. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on October 1, 2003. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, August 7, 2003.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The 2003 recreational red snapper season opens on April 21, 2003, and closes on October 31, 2003. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, August 7, 2003, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: August 6, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–20387 Filed 8–6–03; 3:42 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 154
Monday, August 11, 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.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 783

RIN 0560–AG83

Tree Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule provides for implementation, subject to the availability of funds, of the Farm Service Agency (FSA) Tree Assistance Program (TAP) recently authorized by the Farm Security and Rural Investment Act of 2002. The TAP program provides assistance to tree, bush and vine owners who have trees, bushes or vines lost by a natural disaster. As of this time, no funds have been appropriated for the program.

DATES: Submit comments on this proposed rule and the information collection requirements of this rule on or before October 10, 2003 in order to be assured of consideration.

ADDRESSES: Comments should be mailed to Dan McGlynn, Deputy Director, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–7641, or hand delivered to room 5754 South, at the address above during normal business hours. All comments and supporting documents on this rule may be viewed by contacting the information contact listed below. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD). Comments may be inspected in the Office of the Director, PECD, (FSA), USDA, Room 4752 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. All comments received, including names and addresses, will become a matter of public record. Comments on the information collection requirements of this proposed rule must be sent to the addresses listed in the Paperwork Reduction Act section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, (202) 720–7641.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any law to publish a notice of proposed rule making for the subject matter of this rule.

Environmental Evaluation

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799 and 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws to the extent such laws are inconsistent with it. Before judicial action may be brought concerning provisions of this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. The rule contains no Federal mandates, as defined by title II of UMRA. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted a request to OMB for the approval of the information collections required for the Tree Assistance Program and the application necessary for the proper functioning of the program.

Title: Tree Assistance Program.

OMB Control Number: 0560–NEW.

Type of Request: Request for a reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The Tree Assistance Program provides assistance to owners of trees, bushes and vines that were lost as a result of a natural disaster. The information is collected to document a producer's eligibility to receive such payments. Producers must certify to the requirements contained in this rule and at 7 CFR part 783. The information will be used by FSA to determine the program eligibility of tree, bush and vine owners. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. Without accurate information, payments could be made to ineligible recipients, and the integrity and accuracy of the program could be compromised.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour and 20 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 333.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 111 hours.

Comment is invited on: (a) Whether the 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 burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to Dan McGlynn, Deputy Director, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, or via electronic mail to: *Dan_McGlynn@wdc.usda.gov.*

Background and Discussion

Sections 10201–10205 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107B171) authorize the appropriation of funds to carry out a Tree Assistance Program (TAP) to provide payments to eligible tree, bush and vine owners who incurred losses due to natural disasters. The statute authorizes payments only for eligible owners who actually replant or rehabilitate eligible trees, bushes and vines and who produce annual crops from trees for commercial purposes. The statute defines ''trees'' to include vines and bushes.

Generally, TAP will be made available under the same or similar terms as the TAP program outlined in the 1997 TAP program codified in rules initially published on January 27, 1998, (63 FR 3791), based on funds provided in Public Law 105–18. However, there are certain notable differences. So far, Congress has left the time frame for damages to trees, bushes and vines open. The rule reflects that lack of precision. In the 1997 Act, owners were eligible for up to 100% of the cost to replace or rehabilitate trees or vines adjusted for normal mortality. In the 2002 Act, subject to a $75,000 per person limit, producers are eligible for reimbursement only up to 75 percent of the replanting costs for trees, bushes and vines in excess of a 15 percent loss, adjusted for normal mortality. The definition of a natural disaster in the 1997 program included flood, drought, hail, excessive moisture, freeze, tornado, hurricane, earthquake, and excessive wind as determined by the agency. The 2002 Act broadened the definition of a natural disaster to also include plant disease and insect infestation. Should funds be appropriated, payments would be provided for the replacement of all qualifying losses of eligible trees, bushes or vines within these limitations. The 1997 program provided payments to eligible tree and vine owners; as indicated, the 2002 Act added bushes to the eligibility criteria. Nursery tree stock and Christmas trees will not be covered under the new TAP program because annual crops are not produced from nursery tree stock and Christmas trees. Instead nursery tree stock and Christmas trees are the crops themselves. The 2002 Act also limits payments by specifying that qualifying acres for a person may not exceed 500 in number. Again, however, while these regulations are being promulgated in the event of a program appropriation, there is not at this time such an appropriation. No payments will be made until there is such an appropriation at which time dates of coverage and other terms and conditions may be imposed as needed in light of available funds.

Part 783 is updated accordingly, and changes are made for clarity, structure and readability.

List of Subjects in 7 CFR Part 783

Disaster assistance, Emergency assistance, Reporting and record keeping requirements.

For the reasons set forth in the preamble, Title 7 of the Code of Federal Regulations part 783 is proposed to be revised as follows:

1. Revise part 783 to read as follows:

PART 783—TREE ASSISTANCE PROGRAM

Sec.

783.1 General.
783.2 Definitions.
783.3 Eligibility.
783.4 Application.
783.5 Benefits.
783.6 Obligations of an owner.
783.7 Multiple benefits.
783.8 Miscellaneous.

Authority: 7 U.S.C 8201 *et seq.*

§ 783.1 General.

(a) *Purpose and Limitation.* This part governs and provides the requirements and authorities for administration of the Tree Assistance Program (TAP) of the Farm Service Agency. This program shall operate only to the extent funds are appropriated for this program or the Secretary under other authority makes funds explicitly available for purposes of this program. Otherwise, no payments shall be made under this part.

(b) *Administration.* The TAP will be administered by the Administrator of the United States Department of Agriculture, Farm Service Agency (FSA), or a designee supervised by the Deputy Administrator for Farm Programs, FSA (Deputy Administrator), and carried out by FSA State and county committees.

(1) State and county committees do not have the authority to modify or waive any provision of this regulation. The State committee shall take any required action not taken by the county committee, correct acts of a county committee which violate this regulation, or prevent a county committee from taking action beyond what is allowed in this regulation.

(2) The Deputy Administrator, or designee, may determine any TAP issue and reverse or modify decisions a State or county committee makes.

(3) This program will cover losses for damages to trees, bushes and vines that occurred between dates announced by the Deputy Administrator. The Deputy Administrator may waive or modify deadlines or other requirements when doing so does not adversely affect the program or when an exception to this regulation is necessary to achieve the goals of the program and distribute benefits more equitably.

§ 783.2 Definitions.

(a) The definitions in part 718 of this chapter apply to TAP except when they conflict with paragraph (b) of this section.

(b) The following terms, as defined, apply to TAP:

Bush means, a low branching woody plant from which an annual fruit or vegetable crop is produced for commercial purposes, such as blueberry bushes.

Cutting means, a vine, which was planted in the ground for commercial production of grapes, kiwi fruit, or passion fruit.

Deputy Administrator means the Deputy Administrator for Farm Programs of the Farm Service Agency of the Department of Agriculture or his or her delegate.

County office means the FSA or USDA Service Center that is responsible for servicing the farm or the county in which the trees, bushes or vines are located.

Individual stand means an area of trees, bushes or vines, which are tended by an owner as a single operation, whether or not such trees, bushes or vines are planted in the same field or similar location. Trees, bushes or vines in the same field or similar area may be separate individual stands if the county committee determines that the trees,

bushes or vines are susceptible to losses at significantly differing levels.

Lost means if the tree has been damaged to such an extent that it would be more economically beneficial to replace it than to leave it in its deteriorated, low producing, state, as determined by FSA.

Natural disaster means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other occurrence of such magnitude or severity so as to be considered disastrous as determined by the Deputy Administrator.

Normal mortality means the percentage of damaged or dead trees, bushes or vines in the individual stand that normally occurs in a 12 month period established by the State Committee (STC).

Owner means an individual, or legal entity, including an Indian tribe under the Indian Self-Determination and Education Assistance Act; an Indian organization or entity chartered under the Indian Reorganization Act; a tribal organization under the Indian Self-Determination and Assistance Act; or, an enterprise under the Indian Financing Act of 1974, who owns a tree, bush or vine as defined in this part.

Program year means a calendar year for which funding is available.

Seedling means a tree, which was planted in the ground for commercial purposes.

Tree means, a tall woody plant having comparatively great height and a single trunk from which an annual fruit or vegetable crop is produced for commercial purposes, such as maple tree for syrup, papaya tree, or orchard tree. Plantain and banana plants are also included. Trees used for pulp or timber are not considered trees under this part.

Vine means, a plant with a flexible stem supported by climbing, twining, or creeping along a surface from which an annual fruit or vegetable crop is produced for commercial purposes, such as grape, kiwi fruit, or passion fruit.

§ 783.3 Eligibility.

(a) *Eligible loss.* To be considered an eligible loss:

(1) Trees, bushes or vines must have been lost as a result of a natural disaster;

(2) The individual stand must have sustained a loss in excess of 15 percent after adjustment for normal mortality;

(3) The loss could not have been prevented through reasonable and available measures; and

(4) The tree, bush or vine would not normally have been rehabilitated or replanted within the 12-month period following the loss.

(b)(1) *Proof of damage.* The damage must be visible and obvious to the county committee except that if the damage is no longer visible, the county committee may accept other evidence of the loss as it determines is reasonable.

(2) County Committee (COC) may require information from an expert in the case of plant disease or insect infestation.

(c)(1) *Eligible owners.* To be eligible for TAP payments the owner must:

(i) Own the stand on which the claim for benefits is based;

(ii) Have owned it at the time the natural disaster occurred; and

(iii) Have continuously owned the stand until the TAP application is submitted; and

(2) Notwithstanding paragraph (c) of this section, no person, as defined in part 1400 of this title, with an annual gross revenue in excess of $2.5 million for the preceding tax year will be eligible for benefits under this part.

(3) Federal, State, and local governments and agencies and political subdivisions thereof are not eligible for benefits under this part.

(d)(1) *Succession.* A new owner is allowed to receive TAP benefits in an amount not to exceed those approved for the predecessor and not paid to the previous owner, if the previous owner agrees to the succession in writing and if the new owner:

(i) Acquires ownership of trees, bushes or vines for which benefits have been approved;

(ii) Agrees to complete all approved practices which the original owner has not completed; and

(iii) Otherwise meets and assumes full responsibility for all provisions of this part, including refund of payments made to the previous owner, if applicable.

(2) In the case of death, incompetence or disappearance of an eligible TAP applicant, successors may be eligible to receive the payments instead as specified in part 707 of this chapter.

§ 783.4 Application.

(a) A complete application for TAP benefits and related supporting documentation must be submitted to the county office prior to the deadline that FSA announces.

(b) A complete application includes all of the following:

(1) A form provided by FSA.

(2) A written estimate of the number of trees, bushes or vines lost or damaged which is prepared by the owner or someone who is a qualified expert, as determined by the county committee.

(3) The number of acres on which the loss was suffered.

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred.

(c) *Agency action.* Before requests will be approved, the county committee:

(1) Must make recommendations and an eligibility determination based on a complete application on those requests that it wants to refer to a higher approval official.

(2) Will verify actual qualifying losses and the number of acres involved by on-site visual inspection of the land and trees, bushes or vines.

(3) May request additional information and may consider all relevant information in making its determination including its members' own knowledge about the applicant's normal operations.

§ 783.5 Benefits.

(a) Subject to the availability of TAP funds, an approved owner shall be reimbursed in an amount not to exceed 75 percent of the eligible costs for the qualifying loss (that loss over and above the calculated 15% mortality). The payment shall be the lesser of the actual costs for the replanting or the amount calculated using rates established by the county committee (not to exceed the maximum amount the Deputy Administrator establishes). The costs permitted shall only be approved for:

(1) Seedlings or cuttings, for tree, bush or vine replanting;

(2) Site preparation and debris handling within normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival;

(3) Chemicals and nutrients necessary for successful establishment;

(4) Labor to plant seedlings or cuttings as determined reasonable by the county committee; and

(5) Labor used to transplant existing seedlings established through natural regeneration into a productive tree stand.

(b) Costs for fencing, irrigation, irrigation equipment, protection of seedlings from wildlife, general improvements, re-establishing structures, windscreens and costs as determined by the Deputy Administrator are not eligible for reimbursement benefits.

(c) When lost stands are replanted, the types planted may be different than those originally planted if the new types have the same general end use, as the county committee determines. Payments will be based on the lesser of rates established to plant the types actually lost or the cost to establish the alternative used. If the species of plantings, seedlings or cuttings differs

significantly from the species lost, as the county committee determines, the costs may not be reimbursed.

(d) Owners may elect not to replant the entire eligible stand. If so, the county committee shall calculate payment based on the number of qualifying trees, bushes or vines actually replanted.

(e) The cumulative total quantity of acres planted to trees, bushes or vines for which a person may receive assistance shall not exceed 500 acres.

(f) The cumulative amount of TAP payments which any person, as defined in accordance with part 1400 of this title, may receive shall not exceed $75,000 per program year.

(g) If the total of all eligible TAP claims received exceeds the available TAP funds, payments shall be reduced by a uniform national percentage after the imposition of applicable payment limitation provisions.

§ 783.6 Obligations of an owner.

(a) Eligible owners must execute all required documents, comply with all applicable noxious weed laws, and complete the TAP funded practice within 12 months of application approval.

(b) If a person was erroneously determined to be eligible or becomes ineligible for all or part of a TAP payment, the person and/or successor shall refund any payment paid under this part together with interest from the date of disbursement at a rate in accordance with part 1403 of this title.

(c) Participants must allow representatives of FSA to visit the site for the purposes of certifying compliance with TAP requirements.

§ 783.7 Multiple benefits.

Persons eligible to receive payments under this part and another program for the same loss, may receive benefits from only one program and must choose which program benefits they want. If other benefits become available after payment of TAP benefits the owner may refund the TAP payment and receive the other program benefit. If the owner purchased additional coverage insurance, as defined in 7 CFR 400.651, or is eligible for assistance or emergency loans under another Federal program for the same loss, the owner will be eligible for such assistance. In no case shall the total amount received from all sources exceed the amount of the owner's actual loss. Should the total amount of benefits exceed the owner's actual loss, the TAP benefits will be reduced accordingly.

§ 783.8 Miscellaneous.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government.

(b) Persons shall be ineligible to receive assistance under this program if they have:

(1) Adopted any scheme or device intended to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(c) TAP benefits paid to a person as a result of misrepresentation shall be refunded to FSA with interest and costs of collection. The party engaged in acts prohibited by this paragraph and the party receiving payment and their successors shall be jointly and severally liable for any amount due. The remedies provided to FSA in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

(d) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents. A minor who is an owner that has met all other eligibility criteria shall be eligible for TAP assistance if:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute; or

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

(d) The regulations regarding reconsiderations and appeals at part 11 of this title and part 780 of this chapter apply to this part.

(e) In lieu of payments in cash, qualifying losses may be compensated by seedlings sufficient to reestablish a stand.

(f) The Deputy Administrator may set such additional conditions and limitations on eligibility as may be needed to reflect limited funding or accomplish program objectives as deemed appropriate by the Deputy Administrator, consistent with governing legislation.

Signed in Washington DC on August 5, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–20345 Filed 8–8–03; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 615

RIN 3052–AB96

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; OFI Lending

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, agency, us, or we) proposes to amend its regulations governing other financing institutions (OFIs) and investments in Farmers' notes so it would be easier for Farm Credit System (FCS, Farm Credit, or System) institutions and non-System lenders to work together in providing affordable credit to agriculture and rural America. In addition, the proposed rule would remove provisions in the existing OFI and Farmers' notes regulations that: Impede the flow of credit; are not required by law; or do not enhance safe and sound operations. The FCA also proposes related amendments to its capital regulations.

DATES: You may send us comments by October 10, 2003.

ADDRESSES: Send us your comments by electronic mail to *reg-comm@fca.gov,* through the Pending Regulations section of our Web site at *www.fca.gov,* or through the government-wide Web site, *www.regulations.gov.* You may also submit your comments in writing to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, or by facsimile transmission to (703) 734–5785. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dennis Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4498, TTY (703) 883–4434,

or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is intended to make affordable credit more available to agriculture and rural America by increasing cooperation between System and non-System lenders. This rulemaking began on April 20, 2000, with an advance notice of proposed rulemaking (ANPRM) that asked the public questions about ways to improve the funding and discount relationship between Farm Credit banks and OFIs. *See* 65 FR 21151. FCA staff subsequently conducted telephone and field interviews with interested parties. On August 3, 2001, we held a public meeting in Des Moines, Iowa, where interested parties offered suggestions on how we could facilitate greater cooperation between System and non-System lenders in providing credit to agriculture and rural America. The public meeting addressed both the OFI program and other arrangements where the FCS and non-System lenders could help each other in extending credit to farmers, ranchers, and other eligible borrowers in rural America.

Many of the comments and suggestions that we received from the ANPRM, interviews, and at the public meeting are incorporated in this proposed rule, which would revise both our OFI and Farmers' notes regulations. This preamble also explains other actions that we are taking to facilitate greater cooperation between System and non-System lenders that will ultimately benefit agriculture and other eligible rural residents. OFIs and Farmers' notes are two separate and distinct programs that arise under different provisions of the Farm Credit Act of 1971, as amended (Act). In the first program, Farm Credit Banks (FCBs) and the agricultural credit bank (ACB) (collectively Farm Credit banks) fund and discount short- and intermediate-term loans that OFIs make to eligible farmers, ranchers, aquatic producers and harvesters, farm-related businesses, and non-farm rural homeowners. The Farmers' notes program currently authorizes certain FCS associations to invest in notes, contracts, and other obligations that eligible farmers and ranchers enter into with suppliers. Changes to the OFI and Farmers' notes regulations require conforming amendments to our capital regulations.

This rule complements other efforts by the FCA to increase the flow of credit to agriculture and rural America by promoting greater cooperation between FCS and non-System lenders. System banks and associations have many different powers that enable them to act as a funding source for a wide array of credit products that non-System lenders offer their customers. For example, Farm Credit banks fund and discount short- and intermediate-term loans that OFIs make to eligible borrowers. Separately, Farm Credit banks and associations can provide non-System lenders with long-term funding, in addition to short- and intermediate-term funding, by buying participations up to 100 percent of the principal amount of the loan. Syndications are another method that FCS institutions use to help non-System institutions extend credit, particularly to larger borrowers. As part of its effort to promote partnering arrangements between FCS and non-System lenders, the FCA is currently exploring methods for the System's use of syndications originated by non-System lenders. Today, the FCA is proposing substantial revisions to its Farmers' notes regulations, which if adopted, will expand this program to more non-System lenders, and allow all FCS associations to invest, for the first time, in both long- and short-term loans between these other lenders and eligible farmers and ranchers.

These different authorities give the FCS many powers to meet the varied funding needs of a wide variety of non-System lenders that finance agriculture. These authorities allow non-System lenders to access any one or a combination of FCS funding programs, depending on individual needs. The System fulfills its mission to finance agriculture and other specified credit needs in rural America by serving as a steady source of funding and liquidity for other lenders. This should result in lower credit costs and more credit options for farmers, ranchers, aquatic producers and harvesters, and other eligible rural residents.

II. Other Financing Institutions

A. History of OFIs

Farm Credit banks have discounted production agricultural loans for OFIs since 1923.[1] Since 1930, Farm Credit banks also have made secured loans and advances directly to OFIs.[2] Thus, OFIs could borrow from, and discount production agricultural loans with, Farm Credit banks before Congress created production credit associations (PCAs) as an alternative source of financing the operating needs of farmers and ranchers.[3] Since 1980, the Act has authorized Farm Credit banks to fund and discount for OFIs any loan that PCAs could make. As a result, OFI loans to eligible processing and marketing, farm-related businesses, and non-farm rural homeowners may also be funded or discounted by a Farm Credit bank.

The legislative history of the various Farm Credit Acts reveals that the primary purpose of the OFI program is to address the scarcity of operating credit for farmers and ranchers.[4] Over the years, Congress has responded to the changing credit needs of farmers, ranchers, and other rural residents by expanding the lending authority of the FCS, and giving Farm Credit banks more authority to fund OFIs.[5] These statutory changes have ensured that the FCS could continue as a source of affordable and reliable credit to agriculture and rural America on both a wholesale and retail level.

OFIs, historically, have established funding or discount relationships with Farm Credit banks when the cost of FCS funds is significantly lower than other funding sources. The OFI program reached its peak in the 1970s and early 1980, when market interest rates were at historically high levels. In 1982, approximately 300 OFIs borrowed approximately $914 million from various Farm Credit banks. By December 31, 2002, Farm Credit banks lent only $291 million to 31 OFIs.

Much of the decline in the OFI program can be attributed to the farm crisis of the mid and late 1980s. Declining land values and commodity prices meant that many farmers were unable to repay their loans, which caused the FCS to experience significant financial stress between 1984 and 1989. During this time, many OFIs terminated their funding and discount relationships with Farm Credit banks for a variety of reasons. One reason for the decline of the OFI program was that Farm Credit banks were in a weakened financial position and, therefore, could no longer offer OFIs competitive rates. Additionally, the merger or consolidation among many commercial bank OFIs improved their liquidity and

[1] *See* The Agricultural Credits Act of 1923, Pub. L. 503, 42 Stat. 1454 (March 4, 1923).

[2] *See* Federal Farm Loan Act Amendments, Pub. L. 439, 46 Stat. 816 (June 26, 1930).

[3] *See* Farm Credit Act of 1933, Pub. L. 75–73D, title II, 48 Stat. 257, 259 (June 16, 1933).

[4] *See* H. R. Rep. No. 1712, 67th Cong., 1st. Sess. (February 25, 1923), p. 17; H.R. Rep. No. 96–1287, 96th Cong., 2nd Sess. (September 4, 1980), p.21.

[5] From 1923 until 1988, OFIs funded and discounted short- and intermediate-term loans with the former Federal Intermediate Credit Banks. Section 410 of the Agricultural Credit Act of 1987 (1987 Act) created the FCBs through the mandatory merger of the Federal Land Bank and the Federal Intermediate Credit Bank in each Farm Credit district. See Pub. L. 100–233, section 410, 101 Stat. 1568, 1637 (January 6, 1988). Section 7.0 of the Act authorizes FCBs to merge with banks for cooperatives to form an ACB. According to section 7.2 of the Act, an ACB has all of the powers and obligations of its constituent banks.

resulted in lower-cost funding for their agricultural loans.

The FCS has regained its financial strength over the past decade. As a result, FCBs and the ACB are once again in a strong financial position to fulfill their statutory mission of increasing the availability of affordable and dependable credit for agriculture and other rural credit needs by assisting both FCS associations and non-System lenders, including OFIs. The FCA has consistently promoted various efforts to improve cooperation among System and non-System lenders so agriculture and rural America will always have adequate credit. In this context, we propose regulatory amendments that will provide OFIs with greater access to the funding and discount services of Farm Credit banks within the confines of the Act.

B. The Act and OFIs

Currently, section 1.7(b)(1) of the Act authorizes Farm Credit banks to offer funding, discounting, and other similar financial services to OFIs so they can make short- and intermediate-term loans to eligible agricultural and aquatic producers, farm-related business, and rural homeowners. Section 1.7(b)(1)(B) of the Act allows national banks, State banks, trust companies, agricultural credit corporations, incorporated livestock loan companies, certain agricultural credit cooperatives, and corporations that lend to aquatic producers and harvesters to become OFIs. Section 1.7(b)(4) requires the FCA to enact regulations that assure that loans, discounts, and other similar financial assistance from Farm Credit banks are available on a reasonable basis to any OFI that:

1. Is significantly involved in lending for agricultural or aquatic purposes;
2. Demonstrates a continuing need for supplementary sources of funds to meet the credit requirements of its agricultural or aquatic borrowers;
3. Has limited access to national or regional capital markets; and
4. Does not use its relationship with its Farm Credit bank to extend credit to persons and for purposes that are not authorized by title II of the Act.

C. FCA's Rulemaking Efforts

This proposed rule is designed to help restore the vitality of the OFI program by making it easier for OFIs to obtain funding from Farm Credit banks. Between 1996 and 1998, the FCA conducted a rulemaking that overhauled the OFI regulations by removing numerous regulatory requirements that were not required by law, or did not promote safety and soundness.[6] The express purpose of our earlier rulemaking was to ''substantially expand access to System funding so OFIs can provide more short- and intermediate-term credit to parties who are eligible to borrow under sections 2.4(a) and (b) of the Act.''[7]

After the earlier rulemaking concluded, Farm Credit banks and OFIs brought to our attention other problems that impeded OFI access to System funding. In response to these concerns, the FCA started this rulemaking in April 2000. The ANPRM sought input on the following issues:

1. The appropriate risk weighting of Farm Credit bank loans to OFIs;
2. Removing regulatory restrictions on funding OFIs located in the chartered territory of another Farm Credit bank;
3. Public disclosure of the identities of OFIs; and
4. Other ways to improve the ability of Farm Credit banks to fund OFIs.

The FCA received 37 comment letters in response to the ANPRM. Of this total, comments were received from six Farm Credit banks and associations, 18 commercial banks, and four non-bank entities. Nine (9) banking trade associations also submitted comments on behalf of their members. Most commenters favored: (1) Lowering the risk weighting on most System bank loans to OFIs; (2) removing territorial restrictions on FCS bank loans to OFIs; and (3) disclosing the identity of OFIs. The commenters also offered us helpful suggestions for improving the funding and discounting relationship between OFIs and their System funding banks. We will discuss these comments in greater detail below when we explain how the proposed rule addresses specific issues.

The responses to the ANPRM indicated that we needed more public input, not only on OFIs, but also on other approaches that would enable the FCS to provide funding to non-System lenders that finance agriculture and other specified needs in rural America. The FCA gained additional information and advice about these issues in the summer of 2001, when staff conducted telephone and field interviews with all Farm Credit banks, an FCS association, and three OFIs in Wisconsin, and Oklahoma. These field interviews were supplemented by telephone interviews with other lenders. In all interviews, the staff asked the questions that we originally raised in the ANPRM and sought additional information about the hurdles that existing and potential OFIs faced in their relationships with FCS funding banks.

The FCA Board also decided to solicit additional guidance from interested parties by convening a public meeting in Des Moines, Iowa, on August 3, 2001. Fifteen (15) representatives from Farm Credit banks and associations, trade associations, commercial banks, OFIs, investment bankers, and farm groups presented testimony at or as follow-up to the public meeting. In addition to discussing the OFI program, commenters at the public meeting also asked the FCA to explore other arrangements where non-System lenders that do not qualify as OFIs could obtain credit services from both Farm Credit banks and associations. The comments that we received from the ANPRM, field and telephone interviews, and the public meeting, helped us develop the rule that we propose today.

D. Regulatory Issues

As we explained earlier, the purpose of this rule is to make it easier for OFIs to obtain funding from Farm Credit banks for their short- and intermediate-term loans to agricultural and aquatic producers, farm-related business, and rural homeowners. Improving OFI access to the funding and discount services of Farm Credit banks could make affordable credit more available to farmers, ranchers, and other eligible borrowers. Farm Credit banks fulfill their missions as a Government-sponsored enterprise by enhancing the liquidity of OFIs, thereby lowering the cost of funding agriculture.

Commenters identified several regulatory issues pertaining to the OFI program. The FCA proposes to address some of the issues by amending the OFI regulations. In other cases, the FCA will explain how the commenters' concerns are addressed by the existing regulations, which means that a regulatory amendment is unnecessary.

1. Assured Access

Section 1.7(b)(4)(B)(i) of the Act requires FCA regulations to assure that the funding and discount services of Farm Credit banks are available on a reasonable basis to any OFI that is significantly involved in lending for agricultural and aquatic purposes. Currently, § 614.4540(b)(1)[8] states that Farm Credit banks must ''fund, discount, or provide other similar financial assistance to any creditworthy OFI that * * * maintains at least 15 percent of its loan volume at a seasonal peak in loans and leases to farmers,

[6] *See* 61 FR 24907 (May 17, 1996); 62 FR 38223 (July 17, 1997); 63 FR 36541 (July 7, 1998).

[7] *See* 63 FR 36541 (July 7, 1998).

[8] *See* 46 FR 51886 (October 22, 1981).

ranchers, aquatic producers and harvesters.'' Section 1.7(b) of the Act and § 614.4540 of the regulations allow OFIs that do not meet this 15-percent threshold to fund and discount their short- and intermediate-term loans at Farm Credit banks, but they are not assured access if credit becomes scarce.

Several commercial bank and System commenters believe that this 15-percent threshold is too onerous, and they asked the FCA to reduce or eliminate it. These commenters erroneously claim that the requirement that agricultural loans always comprise 15 percent of an OFI's loan portfolio discourages potential OFIs and deters existing OFIs from depending on Farm Credit banks as their primary source of agricultural funding. The FCA seeks to dispel the misconception that § 614.4540(b)(1) requires OFIs to always maintain at least 15 percent of their loan portfolio in farm loans in order to maintain assured access. Instead, this regulation requires such OFIs to maintain at least 15 percent of their volume at a seasonal peak in farm loans and leases.

At this time, the FCA does not propose to change the 15-percent threshold as the factor that determines whether an OFI is significantly involved in agricultural lending, and thus assured access to funding from a System bank. In reaching this decision, the FCA examined how two of the other Federal bank regulatory agencies determine if a bank engages in substantial agricultural lending. The FCA's research revealed that the Federal Deposit Insurance Corporation (FDIC) classifies banks as agricultural banks if at least 25 percent of their loans are to farmers or ranchers. The Board of Governors of the Federal Reserve System (Federal Reserve Board) classifies a bank as agricultural if its ratio of farm loans to total loans exceeds the unweighted average of the average of all banks on a given date. Based on this formula, the Federal Reserve Board most recently classified banks as agricultural banks if farm loans comprise at least 14.97 percent of their loan portfolios. Thus, the standard that the FCA uses to determine if a non-System lender is substantially involved in agricultural lending is significantly more permissive than the FDIC's benchmark and comparable to the measure used by the Federal Reserve Board.

The current regulatory threshold also seems to strike a fair balance between the needs of small rural lenders and larger institutions. Agricultural loans usually comprise a larger percentage of the loan assets of small rural lenders. However, larger institutions may extend more overall credit, in dollar terms, to farmers, although agricultural loans are a much smaller percentage of their loan portfolios. Additionally, § 614.4540(b)(1) continues to forbid Farm Credit banks from including the loan volume of an OFI's parent, affiliates, or subsidiaries in determining compliance with this 15-percent threshold. In practice, most lenders establish a separate OFI affiliate to access System bank funding and, therefore, the 15-percent threshold should not be onerous to OFIs. As noted earlier, failure to meet the 15-percent threshold does not prohibit FCS bank funding to creditworthy OFIs unless credit is scarce.

Because the FCA wants to make the OFI program more attractive to eligible agricultural lenders, we invite your comments on alternatives that reasonably demonstrate that an OFI is significantly involved in agricultural lending, as section 1.7(b)(4)(B)(i) of the Act requires.

2. Place of Discount

Non-System lenders and many Farm Credit banks have long considered place of discount restrictions as a major reason why the OFI program has not been widely used by commercial banks and other agricultural lenders. Historically, OFIs borrowed from the Farm Credit bank that serves the territory where such OFIs maintain their headquarters or makes the most of their loans. As a result, OFIs have maintained a funding or discount relationship with a System bank that is owned and controlled by their competitors.

In 1998, the FCA sought to remedy this problem by adopting § 614.4550, which established new place-of-discount rules for OFIs. Under this regulation, every OFI must apply first to the Farm Credit bank that serves the territory where the OFI operates. If the bank denies funding, or otherwise fails to approve a completed application within 60 days, the OFI may apply to any other FCB or the ACB. Additionally, the regulation allows a Farm Credit bank to consent to another System bank funding or discounting loans for an OFI.

We received 28 comments about place of discount in response to the ANRPM, and another five comments about this issue during the interviews and public meeting. Specifically, we received comments on this issue from 12 commercial banks and seven commercial bank trade associations. Additionally, six Farm Credit banks and one FCS association commented on this issue. All commercial bank and bank trade association commenters, five Farm Credit banks, and the one FCS association favored repealing regulatory restrictions on place of discount so OFIs could choose their System funding bank. One Farm Credit bank opposed repealing § 614.4550, so FCS associations would not be placed at a competitive disadvantage.

In response to these comments, the FCA proposes allowing OFIs to apply for funding and discount services from any FCS bank. However, the proposed rule will require a Farm Credit bank to notify another System bank in writing within five (5) business days of receiving an application from an OFI that maintains its headquarters or has more than 50 percent of its loan volume in the territory of the other Farm Credit bank. This notice will give the bank in whose territory the OFI is located ample opportunity to contact the applicants and offer them funding and discount services. Under the proposed rule, no OFI may borrow from two or more Farm Credit banks at the same time. Farm Credit banks extend wholesale credit to OFIs, and they hold the OFIs' retail loans and other collateral as security. Allowing two or more Farm Credit banks to simultaneously fund the same OFI could pose safety and soundness risks to the funding banks if the OFI experienced financial stress and disputes arose over collateral pledged.

Our new regulatory approach would resolve the difficulties that often arise when OFIs must borrow from a Farm Credit bank that is owned and controlled by their competitors. When Farm Credit banks compete for OFI credit, the OFI can lower its funding costs, which it can then pass on to its agricultural borrowers. Additionally, this approach frees Farm Credit banks from potential association pressure not to lend to their competitors. If a Farm Credit bank is concerned about another System bank funding OFIs in its territory, written notice gives it ample opportunity to seek the relationship with the OFI.

3. Borrower Rights

Section 4.14A(a)(6)(B) of the Act expressly requires OFIs to adhere to borrower rights, ''but only with respect to loans discounted or pledged under section 1.7(b)(1).'' The borrower rights that apply to loans that OFIs discount or pledge with a Farm Credit bank are: (1) Effective Interest Rate (EIR) disclosures; (2) notice of adverse credit decision; (3) the right to appeal adverse credit decisions to the lender's credit review committee; (4) receiving copies of certain documents; and (5) the right to restructure distressed loans. Existing § 614.4560(d) implements section 4.14A(a)(6)(B) of the Act by requiring OFIs to comply with borrower rights on

those loans that Farm Credit banks fund or discount.

During this rulemaking, the FCA received numerous comments from existing and potential OFIs and a Farm Credit bank that borrower rights are a significant disincentive to the success of this program. Borrower rights are a statutory requirement for OFIs; therefore, the FCA cannot repeal § 614.4560(d).

Recently, a Farm Credit bank and some of its affiliated OFIs asked the FCA to reconsider its interpretation of section 4.14A(a)(6)(B) of the Act. The FCB and its OFIs interpret section 4.14A(a)(6)(B) to mean that borrower rights apply to OFI loans only during the time they are actually pledged as collateral to the funding bank. Under this interpretation, OFI loans would be exempt from most borrower rights requirements because many of these rights apply before or after the time an OFI's loans are actually pledged to the FCB or ACB. Examples of borrower rights that usually apply before an OFI actually pledges loans to a Farm Credit bank are: (1) Most EIR disclosures; (2) written notice that the borrower's credit application has been denied; and (3) appeals of adverse credit decisions to the lender's credit review committee. An example of a right that applies when a loan is no longer pledged to a System bank is the right of borrowers under section 4.14A of the Act to restructure distressed loans. Borrowers usually seek to restructure a distressed loan after the Farm Credit bank instructs the OFI to remove it from collateral. Under the suggested interpretation, section 4.13A of the Act would be the only borrower rights provision of the Act that would always apply to OFI borrowers. This provision enables System and OFI borrowers to obtain copies of: (1) All loan documents they sign or deliver; (2) loan appraisals on their assets that the lender uses in making credit decisions; and (3) the lender's articles of incorporation and bylaws.

The FCB and its affiliated OFIs advocate an interpretation of section 4.14A(a)(6)(B) of the Act that emphasizes the timing of certain events over how an OFI loan is funded. However, our analysis leads us to conclude that Congress intended section 4.14A(a)(6)(B) of the Act to apply whenever an OFI uses a Farm Credit bank rather than another source (such as deposits or other lines of credit) to fund the borrower's loan. Originally, the provisions of the Act that govern EIR disclosures, written notice of credit denials, and appeal of adverse credit decisions only applied to Farm Credit banks and associations that operate under title I or II of the Act. The 1987 Act amended these statutory provisions so these rights and protections would also apply to OFI borrowers.[9] The 1987 Act also added section 4.14A to the Act so that farmers, ranchers, and aquatic producers and harvesters [10] who borrowed from either the FCS or an OFI would have the right to restructure distressed loans.[11] These statutory amendments clearly demonstrate that Congress intended to grant OFI borrowers whose loans were funded by a Farm Credit bank all of the rights and protections described above, regardless of when certain events occurred.

The FCB and its OFIs believe that Congress's use of the word ''pledged'' in section 4.14A(a)(6)(B) indicates that borrower rights apply only during the period of time when an OFI loan serves as collateral for the Farm Credit bank loan. However, they are reading the word ''pledged'' out of context with the rest of the statute. Section 4.14A(a)(6) refers to ''loans discounted or pledged under section 1.7(b)(1)'' of the Act. However, section 1.7(b)(1) of the Act describes the services that Farm Credit banks are authorized to provide certain FCS associations and OFIs, not the timing of when such associations and OFIs pledge collateral to the bank. Therefore, the term ''pledged'' in section 4.14A(a)(6)(B) covers those loans that a Farm Credit bank funds under its authority in section 1.7(b)(1), not the time when such loans are pledged.

For these reasons, OFIs must comply with borrower rights on all loans that they fund or discount through a Farm Credit bank. Borrower rights, however, do not apply to loans that an OFI funds through other sources. Thus, OFIs that always use the funding or discounting services of a Farm Credit bank to make all of its short- and intermediate-term agricultural and aquatic loans must comply with all borrower rights requirements.

Some flexibility may exist, however, for those OFIs that actually use several sources of funding, including Farm Credit banks, to make loans to farmers, ranchers, and aquatic producers and harvesters. In some cases, an OFI genuinely may not know how it will fund a particular borrower's loans until after closing. In such cases, an OFI may decide not to give the borrower an EIR disclosure, written notification about the denial of credit, or the right to appeal the credit denial to a credit review committee because the OFI plans to use deposits or another line of credit to fund the borrower's loan. If the OFI subsequently decides to draw on its credit line with its Farm Credit bank to fund this loan, borrower rights would apply to all future actions on this loan. For example, a borrower who did not receive an EIR disclosure at closing would be entitled to an EIR disclosure at a later date if the OFI funds or discounts the loan with the Farm Credit bank and then adjusts the borrower's interest rate. The OFI must also give the borrower written notice and the right to appeal adverse credit actions to a credit review committee once it funds or discounts a seasoned loan with a Farm Credit bank. OFIs must also honor the rights of borrowers to restructure distressed loans even if the Farm Credit bank removed such loans from collateral after their credit quality declined. Once a Farm Credit bank funds or discounts a loan, borrower rights attach to it for the duration of the loan. This is the same approach that the FCA follows for loans that FCS institutions sell to non-System lenders.[12]

The FCA proposes a technical correction to § 614.4560(d). Currently, this provision erroneously states that section 4.36 of the Act applies to all loans that an OFI funds or discounts through an FCB or ACB. In fact, the plain language in section 4.36 of the Act states that the right of first refusal applies only to the borrowers of FCS institutions that operate under title I or II of the Act. As a result, OFIs are subject to some, but not all, of the regulations in subpart N of part 614. Accordingly, the FCA proposes to omit the reference to section 4.36 from § 614.4560(d) and to further amend this regulatory provision so it refers to §§ 614.4516, 614.4517, 614.4518, and 614.4519, which are the only regulations in subpart N of part 614 that apply to OFIs.[13]

4. Equitable Treatment

In 1998, the FCA adopted § 614.4590, which requires Farm Credit banks to treat OFIs and FCS associations

[9] Pub. L. 100–233, Sections 103, 104, 105, and 106, 101 Stat. 1568, 1579–81 (January 6, 1988).

[10] Borrower rights do not apply to loans that are subject to the Truth-in-Lending Act, 15 U.S.C. 1601 *et seq*. The Truth-in-Lending Act applies to consumer credit. Non-farm rural home loans and consumer loans to farmers are subject to the Truth-in-Lending Act, not the borrower rights provisions of the Act. *See* Act, §§ 4.13 and 4.14A(a)(5). Also, borrower rights do not apply to loans that the ACB makes under title III of the Act. *See* Act §§ 4.14A(a)(6)(A).

[11] Pub. L. 100–233, Sections 102, 101 Stat 1568, 1574 (January 6, 1988).

[12] 12 CFR 614.4336.

[13] The FCA recently proposed to move all borrower rights regulations to part 617. *See* 68 FR 5587, February 4, 2003. If the FCA adopts this change the final OFI rule will revise the cross-references to borrower rights regulations in § 614.4560(d).

equitably. More specifically, § 614.4590(a) states that Farm Credit banks must apply comparable and objective loan underwriting standards and pricing requirements to both OFIs and FCS associations. Under § 614.4590(b), the total charges that a System bank assesses its OFIs must be comparable to the total charges it imposes on its affiliated associations. This regulation also states that any variation between the overall funding costs that OFIs and FCS associations are charged by the same funding bank must result from differences in credit risk and administrative costs to the FCB or ACB.

Many responses to the ANPRM and several speakers at the public meeting expressed the view that Farm Credit banks do not treat OFIs equitably with FCS associations, which own and control each System bank. According to these commenters, the perception of unfair treatment discourages potential OFIs from establishing a funding and discount relationship with an FCB or ACB. Many commenters informed us that existing OFIs often feel that Farm Credit banks favor the associations.

Many commercial bank commenters suggested that our regulations should mandate equal, rather than equitable, treatment of OFIs and FCS associations. These commenters believe that the disparity of treatment is especially evident in the price of funding that Farm Credit banks charge their OFIs and FCS associations. Several commenters want us to require Farm Credit banks to disclose to OFIs exactly how they price their loans to both OFIs and FCS associations. Several commercial bank trade associations asked the FCA to require Farm Credit banks to identify the specific components that make up their cost of funds to OFIs and the amount of these components in terms of basis points. Commercial banks and their trade associations also requested that the FCA enact regulations that expressly prohibit Farm Credit banks from charging OFIs fees that are not charged to FCS associations. Some commenters asked the FCA to require Farm Credit banks to pay dividends or patronage to OFIs.

The FCA sought to address many of these concerns in the rulemaking that ended in 1998 by adopting § 614.4590, which requires Farm Credit banks to treat OFIs and FCS associations equitably. The FCA notes that the OFI program has not significantly expanded since 1998, but many of the same complaints about disparate treatment by Farm Credit banks of OFIs and FCS associations have surfaced once again. The FCA has decided to address these concerns by proposing amendments to § 614.4590 that would strengthen regulatory requirements concerning equitable treatment.

Fundamental differences between OFIs and direct lender associations mean that regulations can only require Farm Credit banks to treat OFIs and FCS direct lender associations equitably, but not equally. The following are some of the fundamental differences between these two types of financial institutions that preclude identical treatment:

- OFIs have access to several funding sources whereas direct lender associations do not.
- FCS associations have invested significant amounts of capital in the funding bank, while most OFIs have not.
- A direct lender association pledges all of its loans to the Farm Credit bank, whereas OFIs do not.
- FCS associations are members of a cooperative credit system that shares gains and losses, whereas OFIs have limited exposure to such losses.
- Administrative costs for funding a direct lender association and an OFI differ because OFIs are not required to maintain a long-term commitment with a System funding bank.

These fundamental differences mean that OFIs expose Farm Credit banks to different credit risks and administrative costs than direct lender associations. As a result, some disparity in cost of funds that an FCB or ACB charges FCS associations and OFIs may be justified. For this reason, § 614.4590 requires that Farm Credit banks treat OFIs comparably, but not identically, to FCS associations in pricing loans. In fact, § 614.4590(b) states that the total charges that an FCB or ACB assesses an OFI through capitalization requirements, interest rates, and fees shall be comparable to the charges that the same Farm Credit bank imposes on its direct lender associations. This regulation also specifies that any variation in the overall funding costs that the same FCS funding bank charges OFIs and direct lender associations must be attributed to differences in credit risk and administrative costs to the bank.

The current regulation, however, does not require Farm Credit banks to explain and justify variations in the cost of funds to existing OFIs and OFI applicants. As a result, it is difficult to ascertain whether Farm Credit banks are pricing credit comparably for OFIs and FCS associations, as § 614.4590(b) requires. Commercial bank commenters have repeatedly asked the FCA to resolve this problem by requiring Farm Credit banks to disclose to OFIs how they price funding for both OFIs and associations. In 1998, we reasoned that disclosing such pricing information was unnecessary because the regulation did not compel Farm Credit banks to charge identical rates to OFIs and System associations.[14] The comments that we received during this rulemaking have persuaded us to propose a change on this issue. Disclosing pricing information will make the OFI program more transparent and address concerns by existing and potential OFIs that they are not treated fairly. The FCA hopes that this change will attract more agricultural lenders to this program and, therefore, make affordable credit more available for farmers, ranchers, and other eligible rural residents.

The FCA plans to achieve this objective by proposing to add two new provisions to § 614.4590. Proposed § 614.4590(c) would require each FCB or ACB to provide any OFI or OFI applicant, upon request, a copy of its policies, procedures, loan underwriting standards, and pricing guidelines for OFIs. This provision would also specify that the pricing guidelines must identify the specific components that make up the cost of funds for OFIs and the amount of these components in basis points. We believe this requirement is consistent with the information that is available to the associations, and is analogous to EIR disclosures that associations provide to retail borrowers.

Proposed § 614.4590(d) would require each FCB or ACB to explain in writing the reasons for any variation in the overall funding costs it charges OFIs and FCS associations if such information is requested by an OFI or OFI applicant. This provision would require a Farm Credit bank to compare the costs that it charges OFIs and FCS associations as groups or, if possible, variations between groups of OFIs and FCS associations that are of a similar size. However, proposed § 614.4590(d) would expressly prohibit System funding banks from disclosing financial or confidential information about individual FCS associations. Such information is confidential and proprietary information affecting the bank and its other customers and, therefore, it cannot be disclosed to OFIs.

The FCA also proposes a conforming amendment to § 614.4540(c) that would require each FCB or ACB to establish objective policies, procedures, pricing guidelines, and loan underwriting standards for determining the creditworthiness of each OFI applicant. Currently, § 614.4540(c) does not mention procedures or pricing guidelines.

[14] *See* 63 FR 35541 (July 7, 1998).

The proposed rule does not require Farm Credit banks to pay dividends or patronage to their OFIs. It is not appropriate in this instance for FCA regulations to impose business practices on FCS institutions in the absence of a compelling safety and soundness reason.

The proposed amendments to § 614.4590 should ensure that Farm Credit banks treat their OFIs and associations equitably. If information that a Farm Credit bank discloses about how it prices funding for OFIs and FCS associations continues to raise concerns about equitable treatment, an OFI or OFI applicant could pursue this matter with the FCA Ombudsman.

5. Ombudsman

Many commercial banks and their trade associations asked us to appoint an Ombudsman to assist OFI applicants and existing OFIs in establishing and maintaining good relations with System funding banks. On February 25, 2003, the FCA Board established the Office of the Ombudsman. According to the public announcement, ''The Office of the Ombudsman will be an effective, neutral and confidential resource and liaison for the public.'' Addressing the concerns of OFIs will be one of many duties of the Office of the Ombudsman. More information about how the Ombudsman will assist existing and potential OFIs will be forthcoming.

6. Disclosure of OFI Identities

In the ANPRM, we asked you whether we should amend our regulations so Farm Credit banks could disclose the identities of the OFIs that they fund. Our current regulations on releasing information prohibit FCS institutions from releasing information about their borrowers and stockholders to the public.[15] However, these prohibitions apply only to retail borrowers, such as farmers, ranchers, aquatic producers and harvesters, and rural homeowners. We have never interpreted these regulations as prohibiting the release of names of FCS associations that borrow from Farm Credit banks. In fact, information about the identities of FCS associations is widely available because it is contained in financial statements that Farm Credit banks release to the public.

The ANPRM explained why we believe that the reasons for protecting the identity of retail borrowers do not apply to financial institutions that fund and discount loans with a Farm Credit bank. Retail borrowers often are individual consumers, and keeping their identities confidential shields them from unwanted marketing solicitations or publicity involving their personal financial business. In contrast, OFIs could benefit from the disclosure of their identity because it could make prospective retail borrowers aware of other credit options.

We received 33 comments about the disclosure of OFI identities. Twenty-five (25) comments on this issue came from commercial banks or their trade associations; two comments were received from a non-bank entity and an OFI, while six comments came from Farm Credit banks and associations. Reaction was mixed, and neither commercial banks nor System institutions took unified positions on this issue. Most commenters believe that there is no valid justification to prohibit or otherwise restrict Farm Credit banks from disclosing the names of their OFIs. These commenters assert that disseminating this information promotes the OFI program and informs farmers, ranchers, and rural homeowners of their other credit options. These commenters also believe that the FCA regulations should treat FCS associations and OFIs the same when it comes to disclosing their identities to the public. However, other commenters opposed the disclosure of identifying information about OFIs to the public. These commenters believe that requiring such disclosures are an unwarranted intrusion by the FCA into private business transactions. Other commenters expressed the view that OFIs should advertise for customers if they want to expand market penetration, rather than relying on Farm Credit banks to inform potential borrowers of their other credit options. Some commenters suggested a compromise that would allow Farm Credit banks to disclose only the identities of OFIs that consent.

The FCA proposes a new rule, § 614.4595, which would allow Farm Credit banks to disclose to the public the names, addresses, telephone numbers, and Internet Web site addresses of those OFIs that consent in writing. The proposed regulation also requires each Farm Credit bank to adopt policies and procedures for: (1) Obtaining and maintaining the consent of its OFIs; and (2) disclosing this information to the public. Similarly, the financial statements of Farm Credit banks should disclose the identity of an OFI only with its consent. The FCA believes that this regulatory approach empowers each OFI to make the decision whether disclosure of its name, address, telephone number, and Web site address to the public is in its best interest.

7. Associations Acting as Farm Credit Bank Agents

Both System and non-System commenters suggested that FCS associations could serve as an effective conduit for funding OFIs. These commenters pointed out that associations often have established relationships with local OFIs and other commercial lenders. In many cases, FCS associations and existing and potential OFIs already have entered into joint financing arrangements for common borrowers.

The Act allows only Farm Credit banks that operate under title I of the Act, not FCS associations, to establish funding and discount relationships with OFIs. However, section 1.5(18) of the Act allows a Farm Credit bank to delegate to associations such functions as the bank deems appropriate. Similarly, section 2.2(19) of the Act allows a direct lender association to perform functions delegated to it by its funding bank. We believe that this authority allows FCS associations to act as point-of-contact or servicing agents for the Farm Credit bank in its lending relationship with its OFIs.

While associations could not directly fund OFIs, they could help make this program more successful by acting as intermediaries or servicing agents on loans from the Farm Credit banks to OFIs. Such arrangements could help promote new, and support existing, local relationships between the associations and potential and existing OFIs. Origination and servicing fees earned by the associations as agents for the banks can also serve to increase the associations' earnings potential. Such arrangements could also serve to reduce the servicing costs for smaller OFIs. A precedent for this approach is that FCS associations acted as servicing agents on loans that the former regional banks for cooperatives made to small, local, farmer cooperatives. In this capacity, FCS associations provided efficient and effective loan administration for the banks on loans they could have made themselves.

Agreements between the parties can establish these arrangements and, therefore, no new regulation is necessary. The FCA Board supports associations serving as agents for the Farm Credit banks in establishing and maintaining funding relationships between Farm Credit banks and existing or new OFIs.

[15] 12 CFR part 618, subpart G.

8. ''Similar Financial Assistance'' for OFIs

Section 1.7(b)(1) of the Act expressly authorizes Farm Credit banks to ''extend other similar financial assistance'' to both OFIs and FCS associations that extend short- and intermediate-term credit to their customers. Several commenters asked us to clarify exactly what constitutes ''similar financial assistance.'' Similar financial assistance includes lease financing, the issuance of guarantees, surety bonds, and the issuance of standby letters of credit. These all are services that Farm Credit banks routinely provide to their direct lender associations and; therefore, they are also acceptable forms of financial assistance that Farm Credit banks may offer their OFIs. Our explanation is consistent with guidance that we previously offered Farm Credit banks on this issue. At this time, no regulatory amendment is necessary to clarify the meaning of ''similar financial assistance'' in section 1.7(b)(1) of the Act.

9. Establishment of OFI Lending Limits

In 1998, former § 614.4565 was repealed, which imposed a lending limit on the amount of credit that any OFI could extend to a single credit risk with FCS funds. At the time, we acknowledged that certain OFIs would remain subject to lending limits that their primary regulator imposes under applicable Federal or state law. The preamble to the final rule stated that we expect each Farm Credit bank to prudently manage risk exposures to concentrations in OFI loan portfolios through underwriting standards and the general financing agreements (GFAs) executed with the OFIs.[16]

After the FCA repealed former § 614.4565, some Farm Credit banks considered imposing a lending limit on both FCS associations and OFIs that is lower than the lending limit that: (1) Section 614.4353 establishes for System direct lender associations; and (2) Federal or state laws place on depository institutions. During this rulemaking, two commenters asked us to enact a new regulation that would forbid Farm Credit banks from imposing a lending limit on OFIs that is lower than the limit established by applicable Federal or state law. The FCA declines this request because it is inconsistent with safety and soundness. Each Farm Credit bank may establish, by underwriting standards and GFAs, limits on its exposure to concentrations in the loan portfolios of both FCS associations and OFIs that are more stringent than lending limits imposed by statute or regulation, as long as it does not favor FCS associations over OFIs.

10. Eligible Collateral Pledged To Support an OFI's Discounting Arrangements With a Farm Credit Bank

Currently, § 614.4570 requires a secured lending relationship between each Farm Credit bank and every OFI. Under § 614.4570(b)(2), each FCB or ACB must perfect its security interest in any and all obligations and the proceeds thereunder that the OFI pledges as collateral, in accordance with applicable state law. Additionally, § 614.4570(c) allows each FCB and ACB to require its OFIs to pledge supplemental collateral to support the lending relationship.

These commenters asked the FCA to amend § 614.4570(b) so OFIs could pledge long-term agricultural mortgage loans as primary collateral to their FCS funding bank. According to the commenters, this approach would provide OFIs with an additional source of funding for agricultural mortgages.

The FCA denies this request because it is incompatible with section 1.7(b) of the Act, which requires OFIs to use funds from a Farm Credit bank only for the purpose of extending short- and intermediate-term credit to eligible borrowers for authorized purposes under section 2.4(a) and (b) of the Act. OFIs may, however, pledge agricultural mortgages to Farm Credit banks as supplemental, but not primary, collateral under § 614.4570(c).

Section 614.4570(c) requires each FCB and the ACB to develop policies and loan underwriting standards that establish uniform and objective requirements for determining the need and amount of supplemental collateral or other credit enhancements that each OFI must pledge to its System funding bank as a condition for obtaining credit. The amount, type, and quality of supplemental collateral or other credit enhancements specified by such policies and procedures must be proportional to the level of risk that the OFI poses to the System funding bank. Provisions in the GFA or the security agreement govern collateral pledged by each OFI to its System funding bank.

11. Improving the Relationship Between Farm Credit Banks and OFIs

Several commenters offered various suggestions for improving the relationship between Farm Credit banks and prospective and existing OFIs. These suggestions are confidence-building measures that will attract more OFIs to rely on Farm Credit banks as a source of funding and liquidity. These ideas could improve relations between existing OFIs and their funding banks and encourage prospective OFIs to establish funding and discount relationships with Farm Credit banks.

New regulations or policies promulgated by the FCA are not required to implement these ideas for improving the OFI program. Instead, these suggestions request Farm Credit banks to take the initiative and reach out to existing and prospective OFIs. The FCA uses this opportunity to convey the commenters' ideas to Farm Credit banks and provide them with guidance about measures that could make this program more appealing to OFIs. The FCA encourages Farm Credit banks to develop internal programs and initiatives that:

a. Establish outreach programs for contacting prospective OFIs and providing them with information about the bank's services;

b. Routinely publish updated information about its products and services for OFIs, and its underwriting standards, funding terms and conditions, and pricing guidelines for OFI loans;

c. Allow OFI representatives to observe meetings of the bank's board of directors;

d. Promote better communication through roundtable discussions, focus groups, and public discussions that bring OFIs, associations, and other interested parties together to discuss issues of mutual interest;

e. Work with OFIs to identify and remove administrative barriers that hinder OFI access;

f. Allow FCS associations to act as intermediaries and servicing agents on extensions of credit from the funding bank to OFIs, as discussed earlier; and

g. Identify best practices for OFIs.

The FCA is strongly committed to the success of the OFI program. OFIs are an important component of the mission of Farm Credit banks to finance agriculture. By adopting the internal programs and initiatives described above, Farm Credit banks can attract more OFIs to rely on the FCS as a source for funding and liquidity which, in turn, will provide eligible farmers, ranchers, aquatic producers and harvesters, farm-related businesses, and rural homeowners with more plentiful and affordable credit, as Congress intended. The FCA may provide additional guidance to Farm Credit banks about improving the OFI program through bookletters, informational memoranda, and the Office of the Ombudsman.

[16] *See* 63 FR 36541, 36545 (July 7, 1998).

E. Statutory Issues

Many FCS and non-System commenters identified other factors that they view as impediments to the success of the OFI program. Several commenters believe that OFIs should be able to fund or discount long-term mortgage loans on agricultural land and rural homes with Farm Credit banks. Other commenters observed that OFIs cannot hold voting stock in their System funding banks and; therefore, they are not represented on the banks' boards of directors. One commenter opposed the prohibition on Farm Credit banks extending additional credit to OFIs when the aggregate of their liabilities exceeds ten times their paid-in and unimpaired capital and surplus. Several commenters expressed the view that the OFI program should be modeled after the Federal Home Loan Bank System. These restrictions on the OFI program are imposed by the Act, not FCA regulations.

III. Investments in Farmers' Notes

Our public meeting notice asked interested parties for input on both OFIs and ''other types of partnering relationships between System and non-System lending institutions that would increase the availability of funds to agriculture and rural America.'' *See* 66 FR 35428 (July 5, 2001). At the public meeting, many commenters encouraged us to promote other arrangements, in addition to the OFI program, that make it easier for Farm Credit banks and associations to provide funding and liquidity to non-System financial institutions and merchants that extend credit to agriculture. Many commenters expressed their desire for more flexible and informal arrangements between FCS and non-System institutions.

The FCA is exploring a variety of different options that could improve cooperation between FCS and non-System lenders that, in turn, would increase the flow of credit to agriculture and rural America. For example, we are currently reviewing the regulatory treatment of loan syndications. Future rulemakings may suggest other regulatory approaches for enhancing partnering arrangements between FCS and non-System lenders.

Our efforts in this rulemaking focus on the Farmers' notes program. The FCA originally approved this program in 1966. The purpose of the Farmers' notes program is to provide liquidity to private dealers and cooperatives that sell farm machinery, supplies, equipment, home appliances, and other items of a capital nature to eligible farmers and ranchers. The Farmers' notes regulation, § 615.5172, allows PCAs and agricultural credit associations to purchase, as investments, notes, conditional sale contracts, and obligations that evidence the sale of the items, described above to farmers and ranchers.

The authority to purchase Farmers' notes derives from section 2.2(10) of the Act, which permits certain associations to invest their funds as may be approved by their funding bank under FCA regulations. Because Farmers' notes are investments, the regulation places a portfolio cap of 15 percent and a concentration limit of 50 percent of capital and surplus on association investments in Farmers' notes. Additionally, § 615.5172(d) requires participating dealers and cooperatives to endorse Farmers' notes that they sell to these associations with full recourse. The full recourse requirement is designed as a credit enhancement, which is consistent with the treatment of Farmers' notes as investments. Finally, the existing regulation requires associations to contact those notemakers who meet their credit underwriting standards, and encourage them to become FCS borrowers.

The Farmers' notes regulation has become outmoded. The FCA proposes substantial revisions to § 615.5172 that should reinvigorate this program. The proposed revisions should enable this program to evolve as agricultural credit markets continually change, so that FCS associations can help non-System lenders meet the credit needs of farmers. However, the purpose of this program remains the same, namely that FCS associations will continue to provide funding and liquidity to other agricultural creditors.

The FCA proposes four major changes to the Farmers' notes regulation so that this program will be more responsive to the needs of other creditors and their customers. First, all entities that routinely extend agricultural or aquatic credit in the normal course of their business may participate in this program. In the past, this program was restricted to private dealers and cooperatives. Now, merchants and all types of creditors will be able to sell Farmers' notes to FCS associations. Second, the FCA proposes to expand this program to long-term loans. Third, all FCS direct lenders may now invest in Farmers' notes, whereas this program was previously limited to FCS associations that had only short- and intermediate-term lending authorities. Fourth, FCS associations will be allowed to invest in notes from aquatic producers and harvesters and farm-related businesses. All these proposed changes are reflected in proposed § 615.5172(a) and (b).

Other provisions of the proposed rule ensure that FCS direct lender associations continue to treat Farmers' notes as investments. Several provisions of the proposed rule contain various requirements that are designed to enhance the credit quality of Farmers' notes. For example, proposed § 615.5172(b) reaffirms that FCS associations may invest in Farmers' notes that are secured by specified collateral that the underlying debtor pledges to creditors. The FCA also proposes to retain the 15-percent portfolio cap and the 50-percent concentration limit in § 615.5172(c). All proposed revisions to § 615.5172(c) would either conform this provision to amendments in § 615.5172(a) and (b) or are stylistic changes that enhance the clarity of this regulation. Current § 615.5172(d) requires the seller to endorse all Farmers' notes with full recourse. The FCA proposes to update this requirement by allowing other types of credit enhancements, such as guarantees, insurance, reserves of cash or marketable securities, subordinated interests, or a combination of such credit enhancements that would adequately cover the principal amount of the association's investment in Farmers' notes.

The purpose of the portfolio cap, the concentration limit, and the credit enhancements in proposed § 615.5172(d) is to ensure that Farmers' notes are treated as investments. FCS associations are credit cooperatives, and the portfolio cap and concentration limit ensure that most assets in association portfolios are loans to members. The full recourse requirement and the other credit enhancements in § 615.5172(d) lessens the credit risk that FCS associations assume from Farmers' notes.

The FCA proposes to delete the provision in § 615.5172 that currently requires associations to contact the farmers or ranchers who are indebted on these Farmers' notes, and encourage them to become FCS borrowers. This requirement may be an impediment to the success of the Farmers' notes program. Other creditors may be reluctant to sell Farmers' notes to FCS associations as long as the regulation requires such associations to lure away their customers.

The proposed revisions to the Farmers' notes regulation would give the System a greater role in providing funding and liquidity to those who extend credit to agriculture during the normal course of business. The Farmers' notes program complements the OFI

program. Farm Credit banks provide funding and liquidity to OFIs, whereas FCS direct lender associations provide these services through the Farmers' notes program. In both programs, the FCS acts as a source of funding and liquidity to agricultural creditors who need these services so they can meet the credit needs of their customers. As a result, the System fulfills its mission to finance agriculture and related activities in rural America, as Congress intended. From the FCA's perspective, agriculture benefits when System and non-System lenders cooperate to make affordable credit more available for farmers, ranchers, aquatic producers and harvesters, farm-related businesses, and rural homeowners.

IV. Capital Risk Weighting

We have previously interpreted our regulations as requiring funding banks to risk weight loans to OFIs at 100 percent. In contrast, existing § 615.5210(f)(2)(ii)(I) allows Farm Credit banks to risk weight loans to System associations at 20 percent. This means Farm Credit banks currently hold more capital (at a minimum) for loans to OFIs than loans to System associations, which in many cases have similar structures and financial conditions as OFIs.

The ANPRM acknowledged that many OFIs, particularly commercial banks or their affiliates might pose no greater risk to their FCS funding bank than System associations. However, unregulated non-bank OFIs could expose their System funding bank to greater risk than FCS associations and regulated OFIs. The preamble to the ANPRM explained, in detail, the risk-reducing features of FCS associations that justified a 20-percent risk weighting.[17]

Furthermore, as the preamble to the ANPRM observed, the risk-weighting categories in the FCA's capital regulations are patterned after the risk-weighting categories in the 1988 Basel Accord, which the other Federal bank regulatory agencies adopted and applied to all depository institutions. As a result, many, but not all, OFIs have the same risk-reducing features as FCS associations. The ANPRM asked several questions about whether and how we should amend our capital regulations to address the risk weighting of OFI loans by Farm Credit banks.

We received 38 comments on this issue during the ANPRM comment period and as part of the public meeting testimony from 28 commercial banks, two non-bank entities and OFIs, five Farm Credit banks, and two associations. The overwhelming majority of the commenters supported the concept of differentiating the risk weighting of OFI loans based on the structure and risk-mitigating characteristics of the OFIs. Under this approach, OFIs that are Federal- or state-regulated depository institutions or their affiliates would be risk-weighted at 20 percent, while unregulated non-bank OFIs might be risk weighted at a higher percentage. One unregulated OFI opposed any change to the risk weighting of OFI loans by Farm Credit banks. Three commenters, including two FCBs, suggested that Farm Credit banks apply the same risk weight to all OFI and FCS association loans.

The FCA proposes amendments to § 615.5210 that would permit Farm Credit banks to risk weight their loans to OFIs that are Federal- or state-regulated depository institutions, or their affiliates, at 20 percent. Under this proposal, Farm Credit banks would continue to risk weight loans to OFIs that are unregulated, or exhibit a higher risk profile at either 50 or 100 percent, depending on certain factors, which are explained below. Although we received no comments about how to risk weight Farmers' notes, the proposed rule would establish similar risk weights for these investments.

The proposed rule would establish a 20-percent risk weighting for OFIs or Farmers' notes sold by entities that are either: (1) An equivalent to an OECD[18] bank (Federal- or state-regulated depository institution); (2) subsidiaries of OECD equivalent banks or bank holding companies and carry full guarantees from such parent entities; or (3) an institution that carries one of the three highest ratings from a nationally recognized statistical rating organization (NRSRO).[19]

Additional criteria for a 20-percent risk weighting is that the obligation must have full recourse or another form of credit enhancement. Under § 614.4570(a), OFIs must pledge full recourse on all loans they fund or discount with a Farm Credit bank. Proposed § 615.5172(d) requires full recourse or another form of credit enhancement for Farmers' notes as described in the proposed rule.

Proposed § 615.5210 would establish a 50-percent risk weighting for OFIs or Farmers' notes sold by entities that: (1) Are not OECD banks but otherwise meet similar capital and operational standards; and (2) carry an investment grade or higher NRSRO rating. Again, full recourse or another appropriate credit enhancement is a condition for the 50-percent risk weighting. The proposed rule establishes a 100-percent risk weighting for all OFIs and Farmers' notes that do not qualify for the 20-percent or 50-percent risk weight categories.

Applying lower risk weightings for OFIs that are considered less risky would allow the FCBs to hold less capital to support such loans. This approach is consistent with the direction from the proposed Basel Accord revisions, which are currently under consideration. Lowering the capital requirements for OFI loans will lower the operating costs of the OFI program to Farm Credit banks, which in turn should lower the cost of funds to OFIs and ultimately reduce interest rates charged to OFI borrowers. These outcomes would advance the System's public mission to provide affordable credit on a consistent basis to agriculture and rural America. Greater flexibility for the risk weighting of OFI loans should provide the Farm Credit banks additional incentives to expand their lending to both existing and new OFIs.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

[17] *See* 65 FR 21151 (April 20, 2000).

[18] *OECD* means the group of countries that are full members of the Organization for Economic Cooperation and Development, regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund's General Arrangement to Borrow, excluding any country that has rescheduled its external sovereign debt within the previous 5 years. For purposes of United States banking operations, all Federally regulated depository institutions are considered the equivalent of OECD banks.

[19] Nationally recognized statistical rating organization means an entity recognized by the Division of Market Regulation of the Securities and Exchange Commission (or any successor Division) (Commission) as a nationally recognized statistical rating organization for various purposes, including the Commission's uniform net capital requirements for brokers and dealers.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, parts 614 and 615, chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

2. Revise § 614.4540(c) to read as follows: § 614.4540 *Other financing institution access to Farm Credit Banks and agricultural credit banks for funding, discount, and other similar financial assistance.*

* * * * *

(c) *Underwriting standards.* Each Farm Credit Bank and agricultural credit bank shall establish objective policies, procedures, pricing guidelines, and loan underwriting standards for determining the creditworthiness of each OFI applicant. A copy of such policies and guidelines shall be made available, upon request to each OFI and OFI applicant.

* * * * *

3. Revise § 614.4550 to read as follows:

§ 614.4550 Place of discount.

A Farm Credit Bank or agricultural credit bank may provide funding, discounting, or other similar financial assistance to any OFI applicant. However, a Farm Credit Bank or agricultural credit bank cannot fund, discount, or extend other similar financial assistance to an OFI that maintains its headquarters, or has more than 50 percent of its outstanding loan volume to eligible borrowers who conduct agricultural or aquatic operations in the chartered territory of another Farm Credit bank unless it notifies such bank in writing within five (5) business days of receiving the OFI's application for financing. Two or more Farm Credit banks cannot simultaneously fund the same OFI.

4. Revise § 614.4560(d) to read as follows:

§ 614.4560 Requirements for OFI funding relationships.

* * * * *

(d) The borrower rights requirements in part C of title IV of the Act, and the regulations in subparts K, L, and §§ 614.4516, 614.4517, 614.4518, and 614.4519 of subpart N of part 614 shall apply to all loans that an OFI funds or discounts through a Farm Credit Bank or agricultural credit bank, unless such loans are subject to the Truth-in-Lending Act, 15 U.S.C. 1601 *et seq.*

* * * * *

5. Amend § 614.4590 by adding new paragraphs (c) and (d) to read as follows:

§ 614.4590 Equitable treatment of OFIs and Farm Credit System associations.

* * * * *

(c) Upon request, each Farm Credit Bank or agricultural credit bank must provide each OFI and OFI applicant a copy of its policies, procedures, loan underwriting standards, and pricing guidelines for OFIs. The pricing guidelines must identify the specific components that make up the cost of funds for OFIs and the amount of these components in basis points.

(d) Upon request of any OFI or OFI applicant, each Farm Credit Bank or agricultural credit bank must explain in writing the reasons for any variation in the overall funding costs it charges to OFIs and direct lender associations. The written explanation must compare the cost of funds that the Farm Credit Bank or agricultural credit bank charges the aggregate of its OFIs and affiliated direct lender associations. When possible, the written explanation shall compare the costs of funding that the bank charges several OFIs and FCS associations that are similar in size. However, the Farm Credit Bank or agricultural credit bank must not disclose financial or confidential information about any individual FCS association.

6. Amend part 614, subpart P by adding a new § 614.4595 to read as follows:

§ 614.4595 Public disclosure about OFIs.

A Farm Credit Bank or agricultural credit bank may disclose to members of the public the name, address, telephone number, and Internet Web site address of any affiliated OFI only if such OFI, through a duly authorized officer, consents in writing. Each Farm Credit Bank and agricultural credit bank must adopt policies and procedures for obtaining and maintaining the consent of its OFIs and for disclosing this information to the public.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

7. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart F—Property, Transfers of Capital, and Other Investments

8. Revise § 615.5172 to read as follows:

§ 615.5172 Investments by associations in Farmers' notes.

(a) In accordance with policies prescribed by the board of directors of the Farm Credit Bank or agricultural credit bank that funds it and each direct lender association, each direct lender association may invest in notes, sales contracts, and other similar obligations (hereafter Farmers' notes) that eligible farmers, ranchers, producers and harvesters of aquatic products, and farm-related businesses give to entities that routinely extend credit in the normal course of their business.

(b) Farmers' notes must be secured by:

(1) Collateral of a capital nature that eligible farmers, ranchers, producers and harvesters of aquatic products use in their agricultural or aquatic operations or for their household needs;

(2) Collateral of a capital nature that eligible farm-related businesses use in providing farm-related services to eligible farmers and ranchers.

(c) The total amount that an association may invest in Farmers' notes, at any one time, must not exceed 15 percent of the balance of its loans outstanding at the close of the association's preceding fiscal year. In addition, the total amount that an association may carry as investments in Farmers' notes originated by any one selling entity must not exceed 50

percent of the association's capital and surplus.

(d) All Farmers' notes in which an association invests shall have at least one or a combination of the following credit enhancements:

(1) The selling entity must endorse these Farmers' notes with full recourse;

(2) A guarantee by a creditworthy third party covers the full principal amount of the Farmers' note;

(3) Acceptable insurance covers the principal amount of each Farmers' note;

(4) The selling entity or a third party maintains a reserve of cash or marketable securities in an amount that equals or exceeds 10 percent of the principal amount of each Farmers' note;

(5) The selling entity or a third party holds a subordinated interest that equals or exceeds 10 percent of the principal amount of each Farmers' note; or

(6) The entire principal amount of the Farmers' notes is covered by a combination of credit enhancements listed in this section.

Subpart H—Capital Adequacy

9. Amend § 615.5210 by adding new paragraphs (f)(2)(ii)(M) and (N); (f)(2)(iii)(C); and (f)(2)(iv)(E) and (F) to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(M) Claims on other financing institutions provided that:

(*1*) The other financing institution qualifies as an OECD bank or it is owned and controlled by an OECD bank that guarantees the claim, or

(*2*) The other financing institution has a rating in one of the highest three investment-grade rating categories from a NRSRO or the claim is guaranteed by a parent company with such a rating, and

(*3*) The other financing institution has endorsed all obligations it pledges to its funding Farm Credit bank with full recourse.

(N) Investments in Farmers' notes that:

(*1*) Provide the Farm Credit System direct lender association full recourse against a seller or has other acceptable credit enhancements specified in § 615.5172(d), and

(*2*) Are guaranteed by an OECD bank or other institution that qualifies for a 20-percent risk weight under this section, or

(*3*) Are sold by entities that:

(*i*) Are rated in one of the highest three investment-grade rating categories from a NRSRO or the investment is guaranteed by a parent company with such a rating. If the entity has more than one NRSRO rating the lowest rating shall apply.

(*ii*) Maintain capital to total assets of at least 9 percent.

(iii) * * *

(C) Claims on other financing institutions that:

(*1*) Are not covered by the provisions of paragraph (f)(2)(ii)(M) of this section, but otherwise meet similar capital, risk identification and control, and operational standards, or

(*2*) Carry an investment-grade or higher NRSRO rating, and

(*3*) The other financing institution has endorsed all obligations to its Farm Credit funding bank with full recourse.

(D) Investments in Farmers' notes that:

(*1*) Provide the Farm Credit System direct lender association full recourse against a seller or has other acceptable credit enhancements specified in § 615.5172(d), and

(*2*) The seller is not covered by the provisions of paragraph N (20-percent risk weight), but otherwise meets similar capital, risk identification and control, and operational standards, or

(*3*) The credit provider carries an investment-grade or higher NRSRO rating.

(iv) * * *

(E) Claims on other financing institutions that do not otherwise qualify for a lower risk weight category under this section.

(F) Investments in Farmers' notes that do not otherwise qualify for a lower risk weight under this section.

* * * * *

Dated: August 6, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–20360 Filed 8–8–03; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–173–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes Equipped With General Electric (GE) or Pratt & Whitney (P&W) Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, –400D, and –400F series airplanes; equipped with GE or P&W series engines. This proposal would require modifications and functional tests of the wiring of the wire integration unit and the air supply control test unit (ASCTU) of the engine bleed air distribution system. This action is necessary to prevent inadvertent commanded shutdown of the engine bleed air distribution systems due to an erroneous ASCTU command. Such a shutdown could cause depressurization of the airplane and subsequent ice build-up on the engine inlets during descent, which could result in ingestion of ice into the engine(s) and consequent loss of thrust on one or more engines. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–173–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6465; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–173–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report from one operator that, on two separate occasions, there was a loss of airflow from all four bleed air distribution systems on a Model 747 series airplane. Investigation revealed that there were incorrect connections of certain jumper wires to the air supply control test unit (ASCTU) that caused it to indicate an erroneous strut overheat condition. When the ASCTU is in the identified configuration, as found in the airplane incident above, it erroneously senses a strut overheat input. When the ASCTU identifies a strut overheat condition, the ASCTU will command shutdown of the bleed air distribution systems. The ASCTU will identify a normal condition instead of a strut overheat condition if the jumper wires are installed properly.

Inadvertent commanded shutdown of the engine bleed air distribution systems due to an erroneous ASCTU command, could cause depressurization of the airplane and subsequent ice build-up on the engine inlets during descent, which could result in ingestion of ice into the engine(s) and consequent loss of thrust on one or more engines.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–36A2136, Revision 1, dated January 17, 2002, which describes procedures for modifications and resistance tests and post-installation ASCTU tests of the wiring of the wire integration unit (WIU) and the ASCTU of the engine bleed air distribution system. The modifications include wiring changes between the WIU and ASCTU, and wiring changes to the WIU.

The Boeing service bulletin specifies accomplishment of Hamilton Sundstrand Service Bulletin 36–186, dated March 30, 2001. The Hamilton Sundstrand service bulletin describes procedures for modification of the ASCTU by reworking the circuit card assemblies of the bleed controllers.

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; however, this AD identifies the office authorized to approve alternative methods of compliance.

Work Hour Rate Increase

We have reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 414 airplanes of the affected design in the worldwide fleet. The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed modifications and functional tests, and that the average labor rate is $65 per work hour. Required parts would be minimal. Based on these figures, the cost impact of the proposed modifications on U.S. operators is estimated to be $36,400, or $520 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2002–NM–173–AD.

Applicability: Model 747–400, –400D, and –400F series airplanes; as listed in Boeing Service Bulletin 747–36A2136, Revision 1, dated January 17, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent commanded shutdown of the engine bleed air distribution systems due to an erroneous air supply control test unit (ASCTU) command, which could cause depressurization of the airplane and subsequent ice build-up on the engine inlets during descent, which could result in ingestion of ice into the engine(s) and consequent loss of thrust on one or more engines, accomplish the following:

Modifications/Tests

(a) Within 18 months after the effective date of this AD: Do the modifications and functional tests of the wiring of the wire integration unit (WIU) and the ASCTU of the engine bleed air distribution system specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, per the Accomplishment Instructions of Boeing Service Bulletin 747–36A2136, Revision 1, dated January 17, 2002.

(1) Do the wiring changes between the WIU and ASCTU and the wiring changes to the WIU.

(2) Remove the existing ASCTU and install a new or reworked ASCTU.

(3) Before further flight after accomplishment of paragraphs (a)(1) and (a)(2) of this AD: Do the resistance tests and post-installation tests.

Credit for Original Issue of Boeing Service Bulletin

(b) Modifications and tests accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–36A2136, dated April 12, 2001, are considered acceptable for compliance with the corresponding actions specified in paragraph (a) of this AD.

Part Installation

(c) As of the effective date of this AD, no person may install on any airplane an ASCTU having a part number listed in the ''Old Part Number'' column in the table specified in paragraph 3.C. of the Accomplishment Instructions of Hamilton Sundstrand Service Bulletin 36–186, dated March 30, 2001.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on August 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20389 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15694; Airspace Docket No. 03–AAL–12]

Proposed Establishment of Class E Airspace; Chevak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Chevak, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Chevak Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Chevak, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Chevak, AK.

DATES: Comments must be received on or before September 25, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15694/Airspace Docket No. 03–AAL–12, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15694/Airspace Docket No. 03–AAL–12.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public

contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Chevak, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Chevak, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Chevak Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 14, original; and (2) RNAV (GPS) Runway 32, original. New Class E controlled airspace extending upward from 700 ft. above the surface within the Chevak, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Chevak Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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, when promulgated, 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Chevak, AK [New]

Chevak Airport, AK

(Lat. 61°32′01″ N., long. 165°35′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Chevak Airport excluding that airspace within the Hooper Bay, Alaska Class E airspace area.

* * * * *

Issued in Anchorage, AK, on August 4, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–20398 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15693; Airspace Docket No. 03–AAL–13]

Proposed Establishment of Class E Airspace; Akiak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Akiak, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Akiak Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Akiak, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Akiak, AK.

DATES: Comments must be received on or before September 25, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15693/ Airspace Docket No. 03–AAL–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15693/Airspace Docket No. 03–AAL–13.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRM's)

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The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Akiak, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Akiak, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Akiak Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 03, original; and (2) RNAV (GPS) Runway 21, original. New Class E controlled airspace extending upward from 700 ft. above the surface within the Akiak, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Akiak Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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, when promulgated, 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Akiak, AK [New]

Akiak Airport, AK

(Lat. 60°54′10″ N., long. 161°13′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Akiak Airport excluding that airspace within the Bethel, Alaska Class E airspace area.

* * * * *

Issued in Anchorage, AK, on August 4, 2003

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–20399 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15091; Airspace Docket No. 03–AAL–8]

Proposed Establishment of Class E Airspace; Kotlik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Kotlik, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Kotlik Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Kotlik, AK. Adoption of this proposal would result in the establishment of 700 ft. Class E airspace at Kotlik, AK.

DATES: Comments must be received on or before September 25, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15091/ Airspace Docket No. 03–AAL–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15091/Airspace Docket No. 03–AAL–8.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRM's)

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The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Kotlik, AK. The intended effect of this proposal is to establish Class E airspace, from 700 feet above the surface, to contain Instrument Flight Rules (IFR) operations at Kotlik, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Kotlik Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 2, original; and (2) RNAV (GPS) Runway 20, original. New Class E controlled airspace extending upward from 700 feet above the surface within a 7.3 mile radius of the Kotlik Airport would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Kotlik Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points,* dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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, when promulgated, 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Kotlik, AK [New]

Kotlik Airport, AK
(Lat. 63°01′50″ N., long. 163°31′58″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Kotlik Airport.

* * * * *

Issued in Anchorage, AK, on July 29, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–20401 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 016–2003]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed Rule.

SUMMARY: The Department of Justice proposes to amend the Privacy Act exemptions to two Civil Rights Division systems of records, entitled Central Civil Rights Division Index File and Associated Records (JUSTICE/CRT–001), and Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission (JUSTICE/CRT–007), as described in today's notice section of the **Federal Register**.

DATES: Submit any comments by September 10, 2003.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1331 Pennsylvania Ave., NW., Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: The Department proposes to exempt JUSTICE/CRT–001 from 5 U.S.C. 552a (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g). The Department proposes to exempt JUSTICE/CRT–007 from 5 U.S.C. 552a (d)(1), (2), (3) and (4). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k). The Department also proposes to remove the exemptions to the former Civil Rights Division system of records entitled ''Freedom of Information/Privacy Act Records (JUSTICE/CRT–010)'' at 28 CFR 16.90 (e) and (f). The records in CRT–010 are now covered by DOJ–004, and the exemptions are stated in 28 CFR 16.130.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, and 9701.

2. Section 16.90 is revised to read as follows:

§ 16.90 Exemption of Civil Rights Division Systems.

(a) The following system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k): Central Civil Rights Division Index File and Associated Records (JUSTICE/CRT–001). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) *Subsection (c)(3).* To provide the subject of a criminal, civil, or administrative matter or case under investigation with an accounting of disclosures of records concerning him or her could inform that individual of the existence, nature, or scope of an actual or potential criminal or civil violation to gain valuable information concerning the nature and scope of the investigation, to determine whether he or she is the subject of the investigation, and seriously impede law enforcement efforts by permitting the record subject and other persons to whom he or she might disclose the records to avoid criminal penalties, civil remedies, or administrative measures.

(2) *Subsection (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1).* Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Disclosure of classified national security information would cause damage to the national security of the United States. In addition, these records may be subject to protective orders entered by federal courts to protect their confidentiality. Further, many of the records contained in this system are copies of documents which are the property of state agencies and were obtained under express or implied promises to strictly protect their confidentiality.

(4) *Subsection (d)(2).* Amendment of the records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsection (d)(3) and (4).* These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and

thereby present a serious impediment to such investigation.

(8) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal or civil investigation and compromise investigative efforts.

(9) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts.

(11) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(c) The following system of records is exempted from subsections (d)(1), (2), (3) and (4) of the Privacy Act pursuant to 5 U.S.C. 552a (k): ''Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission (JUSTICE/CRT–007).'' These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a (k)(2).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) *Subsection (d)(1).* Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. In addition, these records may be subject to protective orders entered by federal courts to protect their confidentiality. Further, many of the records contained in this system are copies of documents which are the property of state agencies and were obtained under express or implied promises to strictly protect their confidentiality.

(2) *Subsection (d)(2).* Amendment of the records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(3) *Subsection (d)(1), (2), (3) and (4).* This system contains investigatory material compiled by the Equal Opportunity Commission pursuant to its authority under 42 U.S.C. 2000e-8. Titles 42 U.S.C. 2000e-5(b), 42 U.S.C. 2000e-8(e), and 44 U.S.C. 3508 make it unlawful to make public in any manner whatsoever any information obtained by the Commission pursuant to the authority.

(4) *Subsection (d)(3) and (4).* These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

Dated: July 24, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–20341 Filed 8–8–03; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–118]

RIN 1625–AA09

Drawbridge Operation Regulations; Miami River, Miami-Dade County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating regulations of all drawbridges on the Miami River from the mouth of the river to and including the NW. 27th Avenue Bridge, mile 3.7, Miami, Florida. The proposed rule would add a one-hour closure period during the noon hour and place the Brickell Avenue Bridge on an hour and half-hour schedule. Draws would open at any time for tugs, tugs with tows, and emergency vessels. This action is intended to provide scheduled openings for Brickell Avenue vehicle traffic but not interfere with commercial tugs and tugs with tows that operate during certain tidal conditions along the Miami River.

DATES: Comments and related material must reach the Coast Guard on or before October 10, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131. Commander (obr) maintains the public docket for this rulemaking. 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 docket (CGD07–03–118) and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Bridge Branch, 909 SE. 1st Avenue, Miami, Florida 33131, telephone number 305–415–6743.

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 (CGD07–03–118), 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 they 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 Bridge Branch, 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 later notice in the **Federal Register**.

Background and Purpose

Ten bridges along the Miami River fall under existing regulation 33 CFR 117.305. These bridges carry commuter traffic into and out of the downtown Miami area and its neighboring business districts. The current regulation requires the draw of each bridge from the mouth of the Miami River to and including the NW. 27th Avenue Bridge, mile 3.7 at Miami, to open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday except Federal holidays, the draws need not open for the passage of vessels. Public vessels of the United States and vessels in emergency situations involving danger to life or property are passed at any time.

First, the proposed rule would add an additional one-hour closure period for the noon rush hour, Monday through Friday except Federal holidays, to all ten of these bridges in order to provide relief for vehicular traffic. This would be in addition to the existing morning and late afternoon closure periods. Second, the first bridge at the mouth of the river, the Brickell Avenue Bridge, which has a vertical clearance of 26 feet at mean high water and a horizontal

clearance of 90 feet, would open only on the hour and half-hour. According to bridge tender logs, the Brickell Avenue Bridge currently opens fewer than two times per hour. The Brickell Bridge carries the majority of the vehicular traffic utilizing the ten bridges along the Miami River, and the proposed rule would provide commuters opportunity to time their arrivals and departures. Draws would open at any time for tugs, tugs with tows, and emergency vessels. This third modification would alleviate the burden on commercial tugs and tugs with tows that only navigate the river during certain tidal conditions. All the closure periods and the opening schedule in the proposed rule would not prohibit these vessels from passage when optimal tidal conditions conflict with the rule. These changes would be in effect from 7 a.m. until 7 p.m., Monday through Friday except Federal holidays.

Discussion of Proposed Rule

The Coast Guard proposes the following changes to the regulations governing the ten bridges on the Miami River from the mouth to and including the 27th Avenue Bridge, mile 3.7 at Miami: the addition of a closure period from 12:05 p.m. to 12:59 p.m., Monday through Friday except Federal holidays; the addition of an hour and half-hour opening schedule for the Brickell Avenue Bridge from 7 a.m. to 7 p.m. Monday through Friday except Federal holidays; and the exception for tugs and tugs with tows from these regulations. These changes would ease vehicular traffic congestion in downtown Miami by providing an additional closure period for all ten bridges and timed openings on the major thoroughfare at the Brickell Avenue Bridge, while still meeting the reasonable needs of navigation on the Miami River, in part by allowing tugs and tugs with tows to be excepted from the new schedule.

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 Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The proposed rule makes only minor changes to the existing bridge operation schedules by adding a closure period at noon, but exempts commercial tugs and tugs with tows. It also proposes to schedule hour and half-hour openings for the Brickell Avenue Bridge that currently opens fewer than twice an hour according to bridge tender logs. Two openings will continue to be available with the new schedule change.

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, because the proposed rule only makes a slight change to the existing bridge operation schedules. The proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels and vehicles intending to transit under and over the bridges on the Miami River, including the Brickell Avenue Bridge during the hours of 7 a.m. to 7 p.m., Monday through Friday except Federal holidays, as well as some waterfront facility owners on the Miami River. The Brickell Avenue Bridge currently opens less than twice an hour and, under the proposed rule, will provide a schedule of two openings per hour. Tugs and tugs with tows will benefit from the proposed rule, because they will be exempt from scheduled openings and closure periods.

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 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 under **FOR FURTHER INFORMATION CONTACT**.

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 will 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 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 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 proposed 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 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.

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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.305 to read as follows:

§ 117.305 Miami River, Florida.

* * * * *

(a) The draws of each bridge from the Miami Avenue Bridge, mile 0.3, to and including N.W. 27th Avenue Bridge, mile 3.7 at Miami, shall open on signal; except that, from 7:35 a.m. to 8:59 a.m., 12:05 p.m. to 12:59 p.m. and 4:35 p.m. to 5:59 p.m., Monday through Friday except Federal holidays, the draws need not open for the passage of vessels. Public vessels of the United States, tugs and tugs with tows, and vessels in an emergency involving danger to life or property shall be passed at any time.

(b) Brickell Avenue Bridge, mile 0.1, at Miami, shall open on signal; except that, from 7 a.m. to 7 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour and half-hour. From 7:35 a.m. to 8:59 a.m., 12:05 p.m. to 12:59 p.m. and 4:35 p.m. to 5:59 p.m., Monday through Friday except Federal holidays, the draw need not open for the passage of vessels. Public vessels of the United States, tugs and tugs with tows, and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: July 28, 2003.

H. E. Johnson, Jr.,

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

[FR Doc. 03–20335 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–094]

RIN 1625–AA09

Drawbridge Operation Regulations; Rice Creek, Putnam County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the CSX Railroad Swingbridge, across Rice Creek, mile 0.8, Putnam County, Florida. The proposed rule would require the bridge to open on signal during the day and to open with a 24-hour advance notice at all other times. This proposed rule would meet the reasonable needs of navigation on Rice Creek.

DATES: Comments and related material must reach the Coast Guard on or before October 10, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Ave, Room 432, Miami, Florida 33131. Commander (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, 909 SE. 1st Ave. Miami, FL 33131, telephone number 305–415–6743.

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 (CGD07–03–094), 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 they 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. However, you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 432, Miami, Florida 33131, 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 later notice in the **Federal Register**.

Background and Purpose

The CSX Railroad Bridge across Rice Creek, mile 0.8, is a railroad swingbridge with a vertical clearance of 2 feet at mean high water and a horizontal clearance of 30 feet. The current operating regulations published

in 33 CFR 117.5 require the bridge to open on signal. This regulatory proposal would ease the burden of having a full time bridge tender on site. For the last three years, requests to open the bridge have been for intermittent tug and barge traffic between 4 p.m. and 8 a.m. The CSX Railroad, and the tug and barge companies that pass through the bridge service the same customer upstream from the bridge and are able to coordinate their operating schedules for timely bridge openings. This proposed rule would continue to meet the reasonable needs of navigation for this Bridge.

Discussion of Proposed Rule

The proposed rule would require the bridge to open on signal from 8 a.m. to 4 p.m. From 4:01 p.m. to 7:59 a.m., the bridge need open only with a 24-hour advance notice by calling 1–800–232–0142. This schedule would meet the reasonable needs of navigation.

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 Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The proposed rule would provide for openings on signal during the most heavily traveled time periods and not differ from the current regulations governing the operation of this Bridge. The Bridge would open with advanced notice during all other times.

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, because the proposed rule still provides for daily openings on signal during the most heavily traveled time periods. The rest of the time, the Bridge would open with a 24-hour advance notice. Accordingly, the only impact of this proposed rule would be that a vessel would need to provide notice that it required passage between the hours of 4:01 p.m. and 7:59 a.m.

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 proposed 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 this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.** 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 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 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 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.

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. The Administrator of the Office

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.324 is added to read as follows:

§ 117.324 Rice Creek.

The CSX Railroad Swingbridge, mile 0.8, in Putnam County, shall open on signal from 8 a.m. to 4 p.m., daily. From 4:01 p.m. to 7:59 a.m., daily, the Bridge shall open with a 24-hour advance notice to 1–800–232–0142.

Dated: July 28, 2003.

F.M. Rosa,

Captain, Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 03–20336 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC87

Special Regulations, Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to amend its regulations for Canyonlands National Park by prohibiting motor vehicles in Salt Creek Canyon above Peekaboo campsite, in the Needles district. This action implements the selected alternative of the Middle Salt Creek Canyon Access Plan Environmental Assessment (EA).

DATES: Written comments will be accepted by mail, fax, or electronic mail through October 10, 2003.

ADDRESSES: Comments should be addressed to: Canyonlands National Park, Attn: Salt Creek Rule, 2282 SW Resource Boulevard, Moab, Utah 84532. Fax: (435) 719–2300; Email: *canysaltck@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Superintendent, Canyonlands National Park, 2282 SW Resource Boulevard, Moab, Utah 84532; Telephone: (435) 719–2101; Fax: (435) 719–2300; Email: *canysaltck@nps.gov.*

SUPPLEMENTARY INFORMATION: Congress created Canyonlands National Park in 1964 in order to preserve its ''superlative scenic, scientific, and archeological features for the inspiration, benefit, and use of the public.'' 16 U.S.C. 271. The Park is to be administered subject to the 1916 NPS Organic Act as amended, which states in part that the fundamental purpose of parks is ''to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' 16 U.S.C. 1. This provision of the Organic Act was supplemented and clarified through enactment of a 1978 amendment to the 1970 General Authorities Act which stated in part that ''the authorization of activities shall be construed and the protection, management, and administration of [Canyonlands] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purpose for which (the park) was established, except as may have been or shall be directly and specifically provided by Congress.'' 16 U.S.C. 1a–1.

Salt Creek is the most extensive perennial water source and riparian ecosystem in Canyonlands National Park, other than the Green and Colorado Rivers. The Salt Creek ''road'' is an unpaved and ungraded jeep trail that runs in and out of Salt Creek and, at various locations, the trail's path is in the creek bed. It requires a 4-wheel drive vehicle to drive, and vehicle use of the trail periodically resulted in vehicles breaking down or becoming stuck and requiring NPS assistance for removal. Salt Creek is also the heart of the Salt Creek Archeological District, the area with the highest recorded density of archeological sites in the Park. A tributary canyon to Salt Creek contains the spectacular Angel Arch. Until 1998, street-legal motor vehicles were permitted to travel along and in the Salt Creek streambed for approximately 7.2 miles above the Peekaboo campsite, and an additional one mile up the Angel Arch tributary canyon. The Salt Creek road does not provide a route for motorized transit through the Park or to any inholdings within the Park.

The previous management plan affecting Salt Creek (the Canyonlands National Park Backcountry Management Plan) was completed in January 1995. This plan, among other things, established a permit system and a daily limit on the number of motor vehicles authorized to use the Salt Creek road above Peekaboo Springs. The Southern Utah Wilderness Alliance (SUWA) filed a broad challenge to the Backcountry Management Plan in Federal district court. Among other things, SUWA alleged that continued vehicular use of Salt Creek would cause impairment of unique park resources and thus would violate the 1916 National Park Service Organic Act (16 U.S.C. 1–4).

In its June 1998 decision, the U.S. District Court for the District of Utah interpreted the Organic Act to unambiguously prohibit activities in national parks that would permanently impair unique park resources, and concluded that the NPS's decision to allow vehicle travel in Salt Creek would cause significant permanent impairment. The court consequently enjoined the NPS from permitting motor vehicle travel in Salt Creek Canyon above Peekaboo Spring.

Off-highway vehicle groups, interveners in the case, appealed the district court ruling, and in August 2000 the United States Court of Appeals for the Tenth Circuit reversed the district court decision and remanded it for further consideration. The circuit court

ruled that the district court had applied the wrong standard in its interpretation of the Organic Act and should have more fully considered whether the agency's interpretation of the Act, as applied to Salt Creek, was ''based on a permissible construction of the statute.'' The circuit court determined that the administrative record was not clear concerning whether motorized travel in Salt Creek would cause permanent impairment to park resources. The circuit court agreed with the district court that the Organic Act prohibited the NPS from permitting ''significant, permanent impairment.'' However, the circuit court noted that the Organic Act may also prohibit negative impacts that do not rise to the level of ''significant, permanent impairment.'' The circuit court remanded the case to the district court, with instructions to re-examine the record to determine whether the agency's conclusion that there was no significant impact on Salt Creek Canyon from the decision to allow limited vehicular traffic in Salt Creek Canyon was adequately supported. The circuit court also instructed the district court to consider the new NPS Management Policies in regard to ''impairment of park resources or values,'' the central issue in the case, and vacated the district court's injunction on motor vehicle use in Salt Creek Canyon above Peekaboo Spring.

Since the mid-1990s Canyonlands backcountry planning effort, several important changes have occurred. The National Park Service revised its management policies to clarify its interpretation of the statutory provision prohibiting impairment of park resources and values (see *http://www.nps.gov/policy/mp/policies.pdf,* chapter 1). The vehicle prohibition in Middle Salt Creek Canyon that began in 1998 with the district court's injunction has been the only period of significant length without vehicle traffic since the 1964 creation of the Park. This restriction made it possible to gather information on riparian conditions without the effects of vehicles, through the Park's ongoing monitoring program and independent research efforts. In 2001, the U.S. Fish and Wildlife Service designated critical habitat for the threatened Mexican spotted owl, which includes Salt Creek Canyon. In addition, vegetation has returned to the vehicle tracks and water flows have moved sections of the stream channel since motor vehicles were prohibited as a result of the litigation.

To take into account these changes and to address the impairment question following the remand, the NPS initiated an EA process in accordance with the National Environmental Policy Act (NEPA). The district court subsequently stayed its proceedings until completion of this EA. The EA process took advantage of additional scientific information and applied the newly stated NPS impairment policy to analyze, in more depth than had previously been possible, the impacts of a range of access alternatives for Salt Creek from Peekaboo camp to the vicinity of Angel Arch (''Middle Salt Creek Canyon''). The EA was released for public review and comment in June 2002 and a Finding of No Significant Impact (FONSI) was issued in September 2002.

The EA analyzed three alternatives permitting vehicle access. Each of these alternatives would allow vehicle travel on the Middle Salt Creek Canyon road under the permit system and daily vehicle limits of the 1995 Canyonlands/Orange Cliffs Backcountry Management Plan (BMP). Alternative A would allow motor vehicle access on the current alignment of the road year-round. Alternative B would allow vehicle access on the current alignment of the road each year from October 1 until ice makes the creek impassable, or January 31 of the following year at the latest; vehicles would be prohibited the remainder of the year. Alternative C would realign sections of the road to avoid the streambed and riparian area where feasible, and would allow year-round vehicle access.

The fourth alternative analyzed in the EA, Alternative D, would prohibit motor vehicle access in Middle Salt Creek Canyon year-round. Hiking and pack/saddle stock would continue to be permitted, under the provisions of the backcountry management plan.

Under each of the three vehicle alternatives, the use of motor vehicles was found to cause impairment to park resources and values because of adverse impacts to the Salt Creek riparian/wetland ecosystem. Alternative D, prohibiting vehicle access, was found not to cause impairment to park resources and values. Consequently, Alternative D was selected in the FONSI for implementation.

Because each of the three alternatives for vehicle traffic in Middle Salt Creek Canyon would cause impairment of park resources and values, allowing motor vehicles under any one of these alternatives is not permissible under the NPS Organic Act. Other roads in the Needles District, as well as elsewhere in Canyonlands National Park, remain open to motor vehicles. Salt Creek above Peekaboo remains open to foot and pack/saddle stock travel.

San Juan County and the State of Utah have asserted that they hold a right-of-way over the road pursuant to R.S. 2477. R.S. 2477 is a law passed in 1866 that provides, ''the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.'' R.S. 2477 was repealed in 1976, subject to valid existing rights. The NPS has sought and examined information relevant to the claim that this route is an R.S. 2477 right-of-way. Based on this review, the NPS concluded that it had not been shown that a valid right-of-way was constructed during the period when the lands were unreserved. Promulgation of this rule will not affect the ability of the County or State to pursue in an appropriate forum the claim that this is a valid R.S. 2477 right-of-way.

The proposed rule would prohibit motorized public use in Salt Creek Canyon above Peekaboo Spring. Although these regulations do not apply to motor vehicle use for administrative purposes, the Park as a matter of policy has previously chosen to forgo all such motorized use unless necessary for emergency rescue purposes.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Canyonlands National Park, 2282 SW Resource Boulevard, Moab, Utah 84532. You may also comment via the Internet to *canysaltck@nps.gov*. Please include your name and return address in your Internet message. Finally, you may hand-deliver comments to the Park in the previously provided address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Drafting Information: The principal author of this proposed rule is David Wood, Canyonlands National Park.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rule are local in nature and negligible in scope. There are several other roads throughout the Park that commercial motor vehicles may continue to use.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule will have no effect on small or large businesses. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

Takings (Executive Order 12630)

In accordance with Executive Order 12630 and the Attorney General's Guidelines for the evaluation of Risk and Avoidance of Unanticipated Takings, the rule does not have takings implications. The EA/FONSI and the impairment finding with respect to motorized use of the Salt Creek road were made as a direct result of the still pending litigation brought by Southern Utah Wilderness Alliance challenging the permit system which Canyonlands instituted for motor vehicles to use this road. Since this lawsuit was originally filed, state and local entities have asserted that the road constitutes an R.S. 2477 right-of-way, which in this case would be a right-of-way across public lands in favor of the State and local county. As noted previously, the NPS has concluded that the information available to it is not sufficient to demonstrate that a valid right-of-way was created prior to reservation of these lands and that closure to motor vehicles is required to prevent an impermissible impairment to park resources. No evidence exists that either the State or County has ever managed or maintained this road, nor have they commenced administrative or judicial proceedings to lead to a determination whether any such claims are valid. Nevertheless, should it be subsequently determined that the State and County do hold a valid R.S. 2477 right-of-way, the regulation will be revisited to ensure that it is consistent with the property rights that are afforded to the holders of such valid rights-of-way.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation will not have a substantial direct effect on the states, or on the distribution of power and responsibilities among the various levels of government. The rule addresses the prohibition of motorized use in part of a canyon in Canyonlands National Park. Canyonlands has had proprietary jurisdiction over the canyon since the creation of the Park in 1964. On April 9, 2003, the Department of the Interior and the State of Utah entered into a Memorandum of Understanding to implement ''a State and County Road Acknowledgment Process.'' The Memorandum excludes R.S. 2477 rights-of-way within units of the National Park System in Utah and provides that the ''State, Utah counties and the Department shall work cooperatively to minimize trespass situations on roads'' within national parks.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

National Environmental Policy Act

This rule is not a major Federal action significantly affecting the quality of the human environment. Pursuant to the National Environmental Policy Act, 42 U.S.C. § 4332, NPS has prepared an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) on the proposed use of Salt Creek Road. The EA and FONSI may be viewed at *http://www.nps.gov/cany* or copies may be obtained by contacting Canyonlands National Park.

Government-to-Government Relationship with Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

36 CFR part 7 is proposed to be amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Add § 7.44 to read as follows:

§ 7.44 Canyonlands National Park.

(a) *Motor Vehicle Use.* Motor vehicles are prohibited in Salt Creek Canyon above Peekaboo campsite.

(b) [Reserved]

Dated: July 18, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–19964 Filed 8–8–03; 8:45 am]

BILLING CODE 4312–DF–P

POSTAL SERVICE

39 CFR Parts 224, 261 through 268

Release of Information and Records Management Changes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise organizational names and titles relating to the policies for the release of information and records management, and revises the fee structure relating to the furnishing of documents and records to members of the public under the Freedom of Information Act (FOIA). We are proposing these changes because organizational names and titles have changed as a result of agency restructuring. The revisions reflect to whom the public should address issues relating to the release of information and records management. In addition, we are proposing a change to fee structure to permit the recovery of current costs incurred in the furnishing of records to the public.

DATES: Any interested party may submit written comments on the proposed modification on or before September 22, 2003.

ADDRESSES: Mail or deliver written comments on this proposal to the Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., Room 5846, Washington, DC 20260–5846. Copies of all written comments will be available at the address in this section for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Faruq at 202–268–2608.

SUPPLEMENTARY INFORMATION:

Proposed Changes

The Postal Service is proposing to modify parts 224 and 261–268 of Title 39, Code of Federal Regulations, to reflect current organizational names and titles, which have changed as a result of agency restructuring. The proposal additionally modifies part 265, revising the fee structure relating to the furnishing of documents and records to members of the public under the Freedom of Information Act (FOIA).

As a result of agency restructuring, responsibility for Postal Service release of information and records management policy has shifted from Finance to Consumer Affairs. The Chief Privacy Officer (CPO), who reports to the Vice President and Consumer Advocate, has assumed the release of information/records management responsibilities formerly held by the Manager, Administration and FOIA, under the Chief Financial Officer and Executive Vice President.

Under the new organizational structure, the title ''Freedom of Information/Privacy Acts Officer'' is changed to ''Manager, Records Office.'' The Manager, Records Office, reports to the CPO.

The CPO is responsible for the issuance of policy on the protection of privacy and the release of Postal Service records, with the power to authorize the disclosure of such records, and to delegate or take appropriate action if that policy is not adhered to, or if questions of interpretation or procedure arise. The CPO directs the activities of the Privacy Office and the Records Office.

The Manager, Records Office, is responsible for establishing procedures and guidelines to ensure that record management practices are in compliance with the Privacy Act and FOIA. The Manager, Records Office, may also delegate or take appropriate action if policies are not adhered to, or if questions of interpretation or procedures arise.

This proposal further modifies part 265 to revise the fee structure for providing documents and records to the public under the FOIA. Postal Service FOIA fees have not been updated since 1987, and are substantially below allowable costs.

The proposed FOIA fee structure changes in three ways. First, the fees will be assessed in half-hour increments, as opposed to quarter-hour increments. Second, the fee will increase to $32 per hour, to reflect the current cost of providing FOIA services. The third change eliminates the ''clerical'' and ''professional/managerial'' designations of responders, merging the two groups into one.

The use of half-hour increments is consistent with other agency practices and will allow for simpler administrative implementation. The proposed $32 per hour fee is based on the weighted average hourly salary with benefits under the Executive and Administrative Salary (EAS) Schedule, the class of personnel typically involved in providing FOIA services. The existing designations ''clerical'' and ''professional/managerial'' are eliminated. Those terms are often not meaningful within this class of employees.

Computer search fees, based on the *Information Services Price List,* have been updated with present costs related to current technology. The list has been replaced with rates to be assessed for computer processing time and personnel costs when information must be retrieved by computer, as follows:

	Price	Unit
Computer Processing		
Mainframe usage	$.39	per second
Midrange server usage	.06	per second
PC usage	7.00	per 15 minute
Printing computer output	.14	per page
Magnetic tape production.	24.00	per volume
Personnel		
High technical	$120	per hour
Medium technical	70	per hour
Low technical	50	per hour

Lastly, the fee for business change-of-address information is eliminated.

List of Subjects

39 CFR Part 224

Organization and functions (Government agencies).

39 CFR Parts 261, 262, and 263

Archives and records.

39 CFR Part 264

Archives and records, Security measures.

39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

39 CFR Parts 266 and 268

Privacy.

39 CFR Part 267

Archives and records, Classified information, Privacy, Security measures.

For the reasons stated in the preamble, the Postal Service proposes to amend 39 CFR parts 224, 261, and 262–268 as follows:

PART 224—[AMENDED]

1. The authority citation for part 224 continues to read as follows:

Authority: 5 U.S.C. App.3; 39 U.S.C. 203, 204, 401(2), 403, 404, 409, 1001; Inspector General Act of 1978, as amended (Pub.L. 95–452, as amended).

§ 224.1 [Amended]

2. In § 224.1, paragraph (a), remove the words ''a Senior Assistant Postmaster General (SAPMG). The group consists of three departments, each headed by an Assistant Postmaster General and the Office of the Treasurer and the Records Office. The SAPMG, Finance, participates in the planning and budget process, and reviews and evaluates the budget requests of each region for the areas under control of the Finance Group.'' and add in their place the words ''Chief Financial Officer and Executive Vice President. The group includes the following: Vice President, Chief Technology Officer; Vice President, Finance Controller; Vice President, Treasurer; Vice President, Supply Management; Manager, Corporate Financial Planning; Manager, Internal Control; and Manager, Finance Administration.''

PART 261—[AMENDED]

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

Authority: 39 U.S.C. 401.

§ 261.2 [Amended]

4. In § 261.2, paragraph (b), remove the word ''Finance'' and add in its place the words ''the Privacy Office'' .

§ 261.4 [Amended]

5. Amend § 261.4 as follows:

a. In paragraph (a), remove the words ''manager, Administration and FOIA, under the Chief Financial Officer and Senior Vice President,'' and add in their place the words ''Manager, Records Office, under the Privacy Office''; and

b. In paragraph (a) remove the word ''finance'' and add in its place the words ''Consumer Affairs''.

c. Revise paragraph (b).

d. Remove paragraph (c).

The revision reads as follows:

§ 261.4 Responsibility.

* * * * *

(b) The Chief Privacy Officer, under the Vice President and Consumer Advocate, is responsible for administering records and information management policies and for the compliance of all handbooks, directives, and instructions in support of this policy.

PART 262—[AMENDED]

6. The authority citation for part 262 continues to read as follows:

Authority: 5 U.S.C. 552, 552A; 39 U.S.C. 401.

§ 262.2 [Amended]

7. Amend § 262.2 as follows:

a. Redesignate paragraphs (a), (c), and (d) as paragraphs (c), (d), and (e).

b. Add new paragraph (a).

c. Revise paragraph (b).

d. In newly redesignated paragraph (e), remove the words ''Manager, Corporate Accounting'' and add in their place the words ''Records Office'' and remove the word ''official'' and add in its place the words ''Records Office is''.

The addition and revision read as follows:

§ 262.2 Officials.

(a) Chief Privacy Officer. The Chief Privacy Officer (CPO) is responsible for the issuance of policy on the protection of privacy and the release of Postal Service records with the power to authorize the disclosure of such records and to delegate or take appropriate action if that policy is not adhered to or if questions of interpretation or procedure arise. The CPO directs the activities of the Privacy Office and the Records Office.

(b) Manager, Records Office. The Manager, Records Office, manages the Records Office, and is responsible for establishing procedures and guidelines to ensure that record management practices are in compliance with the Privacy Act and FOIA. The Manager, Records Office, may also delegate or take appropriate action if policies are not adhered to or if questions of interpretation or procedures arise.

* * * * *

§ 262.4 [Amended]

8. Amend § 262.4 as follows:

a. In paragraph (a), remove the words ''office of Corporate Accounting or the National Archives and Records Administration'' and add in their place the words ''Records Office''.

b. In paragraph (b), remove the words ''office of Corporate Accounting'' and add in their place the words ''Records Office''.

§ 262.5 [Amended]

9. In § 262.5, paragraph (d)(2), remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office'.

PART 263—[AMENDED]

10. The authority citation for 39 CFR Part 263 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 263.3 [Amended]

11. Amend § 263.3 as follows: In paragraph (a), remove the words ''The Office of Corporate Accounting'' and add in their place the words ''Records Office''.

§ 263.4 [Amended]

12. In § 263.4, remove the words ''Corporate Accounting'' and add in their place the words ''the Records Office''.

§ 263.5 [Amended]

13. Amend § 263.5 as follows:

a. Remove the words ''Corporate Accounting'' and add in their place the words ''Records Office''.

b. Remove the digits ''5240''.

c. Remove the words ''to the Records Specialist''.

d. Remove the digits ''4869'' and add in their place the digits ''2608''.

PART 264—[AMENDED]

14. The authority citation for part 264 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 264.3 [Amended]

15. In § 264.3, paragraph (a), remove the words ''Corporate Accounting'' and add in their place the words ''Records Office''.

PART 265—[AMENDED]

16. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

§ 265.3 [Amended]

17. Amend § 265.3 as follows:

a. In paragraph (a), remove the words ''§ 262.2 (a)'' and add in their place the words ''§ 262.2 (c)''.

b. In paragraph (b), remove the words ''*Freedom of Information/Privacy Acts Officer.* The USPS Freedom of Information/Privacy Acts Officer, under the Manager, Administration and FOIA'' and add in their place the words ''*Manager, Records Office.* The Postal Service Manager, Records Office, under the Privacy Office''.

§ 265.4 [Amended]

18. Amend § 265.4 as follows:

a. Remove the words ''USPS Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

b. Remove the digits ''5202''.

§ 265.5 [Amended]

19. In § 265.5, remove the designation ''.gov'' and add in its place the designation ''.com/foia''.

§ 265.6 [Amended]

20. Amend § 265.6 as follows:

a. In paragraph (b), introductory text, remove the words ''Office of

Administration and FOIA'' and add in their place the words ''Records Office''.

b. In paragraph (d)(1), remove the words ''upon payment of the fee prescribed in § 265.9 (e)(3) and (g)(5),''.

§ 265.7 [Amended]

21. Amend § 265.7 as follows:

a. In paragraph (a)(2), remove the words ''USPS Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

b. In paragraph (a)(2), remove the digits ''5202''.

c. In paragraph (a)(2), remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office''.

§ 265.9 [Amended]

22. Amend § 265.9 as follows:

a. In paragraph (b)(1)(i), remove the words ''each quarter hour spent by clerical personnel in searching for records is $4.40. When a search cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour in searching for records is $5.35.'' and add in their place the words ''a manual search is $32 per hour (fractions of an hour are rounded to the nearest half hour)''.

b. In paragraph (b)(1)(ii), remove the words ''runs and operator salary, as calculated in accordance with the Information Services Price List'' and add in their place the words ''and personnel cost''.

c. In paragraph (b)(1)(ii), remove the words ''list is'' and add in their place the words ''fees are''.

d. In paragraph (b)(2)(ii), remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office''.

e. In paragraph (b)(2)(iii), remove the phrase ''the per-page fee shall be charged'' and add the phrase ''the $.15 per-page fee shall be charged''; and

f. In paragraph (b)(2)(iii), add to the third sentence the words ''or her'' following the word ''his''.

g. In paragraph (b)(3), revise the first two sentences.

h. Remove paragraph (e)(3).

i. In paragraph (g)(1), remove the words ''Fees shall not be'' and add in their place the words ''No fees shall be''.

j. In paragraph (g)(1), remove the last sentence.

k. In paragraph (g)(2)(i), remove the words ''the standard rates set out in the Information Services Price List'' and add in their place the words ''fee for computer searches''.

l. In paragraph (g)(2), remove the words ''(including the cost of equipment use and operator's time) reaches the equivalent dollar amount of the operator's basic rate for two hours plus a factor to cover benefits.'' and add in their place the words ''(including the cost of personnel and computer processing time) reaches the equivalent dollar amount of personnel fees for two hours.''

m. In paragraph (g)(4), remove the words ''office of Administration and FOIA'' and add in their place the words ''Manager, Records Office''.

n. Revise paragraph (g)(5).

The revisions read as follows:

§ 265.9 Schedule of fees.

* * * * *

(b) * * *

(3) * * * The fee for reviewing records located in response to a commercial use request is $32 per hour (fractions of an hour are rounded to the nearest half hour).

* * * * *

(g) * * *

(5) *Fee for other services.* Waivers do not apply for fees for address correction services performed in accordance with section R900 of the *Domestic Mail Manual.*

* * * * *

§ 265.10 [Amended]

23. In § 265.10, remove the word ''.gov'' and add in its place the words ''.com/foia''.

§ 265.12 [Amended]

24. Amend § 265.12 as follows:

a. In paragraph (b)(7), remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

b. In paragraph (b)(7), remove the digits ''5202''.

25. Revise Appendix A to read as follows:

Appendix A to Part 265—Fees for Computer Searches

When requested information must be retrieved by computer, rates for personnel and computer time apply. Estimates are provided to the requester in advance and are based on the following rates:

	Price	Unit
Personnel		
High technical	$120	per hour
Medium technical	70	per hour
Low technical	50	per hour
Computer Processing		
Mainframe usage	$.39	per second
Midrange server usage	.06	per second
PC usage	7.00	per 15 minute
Printing computer output	.14	per page
Magnetic tape production.	24.00	per volume

PART 266—[AMENDED]

26. The authority citation for part 266 continues to read as follows:

Authority: 5 U.S.C. 552a; 39 U.S.C. 401.

§ 266.3 [Amended]

27. Amend § 266.3 as follows:

a. In paragraph (a), remove the words ''Freedom of Information/Privacy Acts Officer. The USPS Freedom of Information/Privacy Acts Officer, under the Manager, Administration and FOIA'' and add in its place the words ''Records Office. The Records Office, within the Privacy Office''.

b. In paragraph (c) remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office''.

c. In paragraph (d)(2) remove the words ''Manager, Administration and FOIA'' and add in their place the words ''Chief Privacy Officer''.

d. Revise paragraphs (d)(2)(i) through (vi) to read as follows:

§ 266.3 Responsibility.

* * * * *

(d) * * *

(2) * * *

(i) Vice President and Consumer Advocate (Chairman).

(ii) Chief Postal Inspector.

(iii) Inspector General.

(iv) Senior Vice President, Human Resources.

(v) Vice President, General Counsel.

(vi) Chief Privacy Officer.''

§ 266.4 [Amended]

28. In § 266.4, paragraph (b)(6)(i),(iii), and (iv), remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

§ 266.5 [Amended]

29. In § 266.5, paragraph (d), remove the words ''office of Administration and FOIA'' and add in their place the words ''Records Office''.

§ 266.6 [Amended]

30. Amend § 266.6 as follows:

a. In paragraph (a), remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

b. In paragraph (a), remove the digits ''5202''.

c. In paragraph (d), remove the words ''Freedom of Information/Privacy Acts

Officer'' and add in their place the words ''Manager, Records Office''.

§ 266.7 [Amended]

31. In § 266.7, paragraph (a)(4), remove the words ''office of Administration and FOIA'' and add in their place the words ''General Counsel''.

§ 266.8 [Amended]

32. In § 266.8, paragraph (b)(3), remove the words ''the per page fee'' and add in their place the words ''$.15 per page fee''.

§ 266.10 [Amended]

33. In § 266.10, paragraphs (a), (b), and (d), remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

PART 267—[AMENDED]

34. The authority citation for part 267 continues to read as follows:

Authority: 39 U.S.C. 401; Pub. L. 93–579, 88 Stat. 1896.

§ 267.3 [Amended]

35. In § 267.3, paragraph (a), remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Chief Privacy Officer''.

§ 267.5 [Amended]

36. Amend § 267.5 as follows:

a. In paragraph (e)(3)(i), remove the words ''Manager, Administration and FOIA'' and add, in their place, the words ''Manager, Records Office''.

b. In paragraph (e)(3)(i), remove the digits ''5202''.

PART 268—[AMENDED]

37. The authority citation for part 268 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 268.1 [Amended]

38. In § 268.1, paragraph (b), remove the words ''Freedom of Information/Privacy Acts Officer'' and add in their place the words ''Manager, Records Office''.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–20358 Filed 8–8–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 188–1188; FRL–7542–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) which establishes a state-wide air emissions banking and trading program. Approval of this revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the revised state rule.

DATES: Comments on this proposed action must be received in writing by September 10, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *kaiser.wayne@epa.gov.* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking?'' in the **SUPPLEMENTARY INFORMATION** section of the direct final rule which is located in the rules section of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603, or by e-mail at *kaiser.wayne@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant 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 action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives any adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts 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: July 28, 2003.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 03–20301 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–078–200335 (b); FRL–7542–1]

Approval and Promulgation of Implementation Plan: Revisions to Florida State Implementation Plan: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Florida for the purpose of establishing transportation conformity rules. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If 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 rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 10, 2003.

ADDRESSES: Comments may be submitted by mail to: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street,

SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, Supplementary Information section [Part (I)(B)(1)(i) through (iii)] which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Matt Laurita, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9044. Mr. Laurita can also be reached via electronic mail at *laurita.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: July 31, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–20303 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV041/046–6015b; FRL–7525–3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation To Prevent and Control Particulate Air Pollution From Combustion of Fuel in Indirect Heat Exchangers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing regulations for the prevention and control of particulate air pollution from combustion of fuel in indirect heat exchangers. In the Final Rules section of this **Federal Register**, 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. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If 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. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 10, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, follow the detailed instructions described in the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173, or by e-mail *at anderson.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number WV041/046–6015b 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.

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. 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. E-mail

Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov,* attention WV041/046–6015b. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, 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.

ii. Regulations.gov

Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iii. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail

Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of 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 at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to 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 regional file/rulemaking 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.

Dated: June 30, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–20305 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ56–250b; FRL–7527–4]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. These revisions consist of source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen (NO_X) from seven facilities in New Jersey.

The EPA is also proposing to approve, for an eighth facility, New Jersey's revised NO_X RACT permit emission limit that EPA previously approved and EPA is incorporating the revised stricter limit into the State's SIP.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP submittals, as a direct final rule without prior proposal because the Agency views them as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before September 10, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA.

Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. Please follow the on-line instructions for submitting comments.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249 OR at Gardella.Anthony@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: July 1, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–20425 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 172–0276b; FRL–7524–8]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern permitting of sources that have the potential to emit above major source thresholds but do not actually emit pollutants at those levels. We are proposing to approve local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Comments must be received in writing by September 10, 2003.

ADDRESSES: Mail comments to Gerardo Rios, Permits Office Chief (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *rios.gerardo@epa.gov.*

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

Permits Office (AIR–3), Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

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

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

Great Basin Unified Air Pollution Control District, 157 Short Street, Bishop, CA 93514

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: David Wampler, Permits Office, (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3975.

SUPPLEMENTARY INFORMATION: This proposal addresses local rules GBUAPCD Rules 218 and 219. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–20427 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[Docket No. OST–2003–15858]

RIN 2105–AD30

Standard Time Zone Boundary in the State of South Dakota: Proposed Relocation of Jones, Mellette, and Todd Counties

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a concurrent resolution of the South Dakota legislature, DOT proposes to relocate the boundary between mountain time and central time in the State of South Dakota. DOT proposes to place all of Jones, Mellette, and Todd Counties in the central time zone.

DATES: Comments should be received by September 25, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable. If the time zone boundary is changed as a result of this rulemaking, the effective date would be no earlier than 2 a.m. MDT Sunday, October 26, 2003, which is the changeover from daylight saving to standard time.

ADDRESSES: You may submit comments to DOT DMS Docket OST–2003–15858 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov.* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9315, or by email at *joanne.petrie@ost.dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is ''regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce.''

Time zone boundaries are set by regulation (49 CFR Part 71). Currently, under regulation, Mellette and Todd Counties, and the western portion of

Jones County, are located in the mountain standard time zone. The eastern portion of Jones County is currently located in the central time zone.

Request for a Change

The South Dakota legislature adopted a concurrent resolution (Senate Concurrent Resolution No. 3) petitioning the Secretary of Transportation to place all of Jones, Mellette, and Todd counties into the central time zone. The resolution was adopted by the South Dakota Senate on February 3, 2003, and concurred by the South Dakota House of Representatives on February 7, 2003. The resolution noted, among other things, that the vast majority of residents of those counties observe central standard time, instead of mountain standard time, because their commercial and social ties are to communities located in the central time zone. It further stated that there would be much less confusion and that it would be much more convenient for the commerce of these counties if these counties were located in the central time zone. A copy of the resolution has been placed in the docket.

Procedure for Changing a Time Zone Boundary

Under DOT procedures to change a time zone boundary, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area make a prima facie case for the proposed change. DOT has determined that the concurrent resolution of the South Dakota legislature makes a prima facie case that warrants opening a proceeding to determine whether the change should be made. Consequently, in this notice of proposed rulemaking, DOT is proposing to make the requested change and is inviting public comment. In addition, we expect to hold one or more hearings in the area that will be chaired by a DOT representative. The time and place of the hearing(s) will be published in a subsequent **Federal Register** notice and be publicized through local media.

We are proposing that this change go into effect during the next changeover from daylight saving time to standard time, which is on October 26, 2003.

Impact on Observance of Daylight Saving Time

This time zone proposal does not directly affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2 a.m. on the first Sunday in April until 2 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance.

Regulatory Analysis and Notices

This proposed rule is not a ''significant regulatory action'' under section 3(f) of E.O. 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 (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. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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, and governmental jurisdictions with populations of less than 50,000. This proposal, if adopted, would primarily affect individuals and their scheduling of activities. Although it would affect some small businesses, not-for-profits and, perhaps, several small governmental jurisdictions, it would not be a substantial number. In addition, the change should have little, if any, economic impact.

Therefore, the Office of the Secretary certifies under 5 U.S.C. 605(b) that this proposed rule would not, if adopted, have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Joanne Petrie at (202) 366–9315.

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

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

Consultation and Coordination with Indian Tribal Governments

E.O. 13175 provides that government agencies consult with tribes on issues that impact the Indian community. The Department has consulted with the Rosebud Sioux Tribal Council and will continue to do so as this rulemaking progresses.

List of Subjects in 49 CFR Part 71

Time zones.

For the reasons discussed above, the Office of the Secretary proposes to amend Title 49 CFR Part 71 to read as follows:

1. The authority citation for Part 71 would continue to read:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; Pub. L. 106–564. 15 U.S.C. 263, 114 Stat. 281149 CFR 159(a), unless otherwise noted.

2. Paragraph (b) of § 71.7, Boundary line between central and mountain zones, would be revised to read as follows:

§ 71.7 Boundary line between central and mountain zones.

(a) * * *

(b) South Dakota. From the junction of the North Dakota-South Dakota boundary with the Missouri River southerly along the main channel of that river to the northeast corner of Jones County; thence west along the northern boundary of Jones County; thence south along the western boundaries of Jones, Mellette and Todd Counties to the South Dakota-Nebraska boundary.

* * * * *

Issued in Washington, DC on August 5, 2003.

Rosalind A. Knapp,

Deputy General Counsel.

[FR Doc. 03–20418 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–62–P

Notices

Federal Register

Vol. 68, No. 154

Monday, August 11, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–040–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Notice of Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that the Secretary anticipates reestablishing the Advisory Committee on Foreign Animal and Poultry Diseases for a 2-year period. The Secretary is soliciting nominations for membership for this Committee.

DATES: Consideration will be given to nominations received on or before September 25, 2003.

ADDRESSES: Nominations should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Joe Annelli, Director, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to keep foreign diseases of livestock and poultry from being introduced into the United States. In addition, the Committee advises on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The Committee Chairperson and Vice Chairperson shall be elected by the Committee from among its members.

Terms expired for the members of the Committee in June 2003. We are soliciting nominations from interested organizations and individuals to replace members on the Committee. An organization may nominate individuals from within or outside its membership. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and U.S. Department of Agriculture (USDA) Regulation 1041–1. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 5th day of August 2003 .

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–20375 Filed 8–8–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 38–2003]

Foreign-Trade Zone 39—Dallas/Fort Worth, Application for Subzone, American Eurocopter LLC (Helicopter Parts), Grand Prairie, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting special-purpose subzone status for the warehousing and distribution facilities of American Eurocopter LLC (AE LLC), located in Grand Prairie, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 4, 2003.

AE LLC's facility is comprised of one site (40.17 acres, 303 employees), located at 2701 Forum Drive in the City of Grand Prairie, Texas.

The facility distributes, repairs and services helicopter parts. The products are distributed in the U.S. and worldwide. (About 10 percent are exported). No authority is being sought for activity conducted under FTZ procedures that would result in a change in tariff classification.

Zone procedures would exempt AE LLC from Customs duty payments on foreign products that are reexported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from its facility. The application indicates that the savings from zone procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submission Via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or
2. *Submissions Via the U.S. Postage Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is October 10, 2003 Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 27, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and the U.S. Department of Commerce Export Assistance Center, 711 Houston St., Fort Worth, Texas, 76102.

Dated: August 4, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–20422 Filed 8–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of new shipper antidumping duty reviews.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Dena Aliadinov or Brandon Farlander at (202) 482–3019 or (202) 482–3362 or (202) 482–0182, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2003).

Background

The Department received timely requests from Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui), Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu Kanghong), Cheng Du Wai Yuan Bee Products Co., Ltd. (Wai Yuan), Shanghai Shinomiel International Trade Corporation (Shanghai Shinomiel), Eurasia Bee's Products Co., Ltd. (Eurasia), and Jinfu Trading Co., Ltd. (Jinfu), in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the People's Republic of China (PRC), which has a December annual anniversary month and a June semiannual anniversary month. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). Wai Yuan identified itself as both the exporter and producer of the subject merchandise. Jinfu identified itself as the exporter of honey produced by its supplier, Cixi City Yikang Bee Industry Co., Ltd. (Cixi Yikang). As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export honey to the United States during the period of investigation (POI), and that it has never been affiliated with any exporter or producer which did export honey during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Wai Yuan and Jinfu submitted documentation establishing the date on which the subject merchandise was first entered for consumption in the United States, the volume of that first shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating new shipper reviews for Wai Yuan and Jinfu. *See also* Memoranda to the File through Richard O. Weible, ''New Shipper Review Initiation Checklist,'' dated July 31, 2003, for each respective company. The Department is not initiating new shipper reviews for the remaining companies due to deficiencies in each of those companies' certifications.[1]

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Wai Yuan and Jinfu, including a separate rates section. If the responses provide sufficient indication that Wai Yuan and Jinfu are not subject to either *de jure* or *de facto* government control with respect to their exports of honey, the review will proceed. If, on the other hand, Wai Yuan and Jinfu do not demonstrate their eligibility for a separate rate, then they will be deemed not separate from other companies that exported during the POI and the review of that respondent will be rescinded.

[1] *See* letters to Anhui Honghui, Jiangsu Kanghong, Shanghai Shinomiel, and Eurasia from Richard O. Weible, dated July 31, 2003. *See also* Memoranda to the File through Richard O. Weible, ''New Shipper Review Initiation Checklist,'' dated July 31, 2003, for each respective company.

Scope

The merchandise under review is honey from the PRC. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise under review is currently classifiable under item 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the antidumping duty order on honey from the PRC. We intend to issue the preliminary results of these reviews not later than 180 days after the date on which these reviews were initiated, and the final results of these reviews within 90 days after the date on which the preliminary results were issued.

Pursuant to 19 CFR 351.214(g)(1)(i)(B) of the Department's regulations, the period of review (POR) for a new shipper review initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for these new shipper reviews is:

Antidumping duty proceeding	Period to be reviewed
Cheng Du Wai Yuan Bee Products Co., Ltd.	12/01/02–05/31/03
Jinfu Trading Co., Ltd.	12/01/02–05/31/03

We will instruct the U.S. Bureau of Customs and Border Protection (Customs) to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by the above-listed companies. This action is in accordance with 19 CFR 351.214(e). As Wai Yuan has certified that it both produced and exported the subject merchandise, we will instruct Customs

to limit Wai Yuan's bonding option only to such merchandise for which it is both the producer and exporter. For Jinfu, which has identified Cixi Yikang as the producer of subject merchandise for the sale under review, we will instruct Customs to limit the bonding option only to entries of subject merchandise from Jinfu that was produced by Cixi Yikang.

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: July 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20423 Filed 8–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–874]

Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Alice Gibbons at (202) 482–3874 and (202) 482–0498, respectively, AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination:

We determine that polyvinyl alcohol (PVA) from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Background

The preliminary determination in this investigation was issued on March 14, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 13674 (March 20, 2003) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

With respect to scope, on March 3, 2003, the petitioners agreed to revise the scope of the companion case on PVA from Japan to exclude certain types of PVA covalently bonded with diacetoneacrylamide. The petitioners' submission was made in response to a request by Japan VAM and POVAL Co., Ltd., one of the mandatory respondents in the companion Japanese case.

Because these comments relate to PVA in general, we find that they are applicable to this proceeding. Accordingly, as we did in the preliminary determination, we have modified the scope to conform to that set forth in the companion Japanese proceeding, as described in the ''Scope of the Investigation'' section of this notice below. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan*, 68 FR 19510 (April 21, 2003).

In March and April 2003, we conducted verification of the questionnaire responses of the sole participating respondent in this case, Sinopec Sichuan Vinylon Works (SVW).

We gave interested parties an opportunity to comment on the preliminary determination. In May, we received case and rebuttal briefs from the petitioners (Celanese Chemicals Ltd. and E.I. Dupont de Nemours & Company) and SVW. The Department held a public hearing on May 29, 2003, at the request of SVW.

Scope of the Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

1) PVA in fiber form.
2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.
3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.
4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.
5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.
6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.
8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.
9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.
11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation is January 1, 2002, through June 30, 2002, which corresponds to the two most recent fiscal quarters prior to the month of the

filing of the petition (i.e., September 2002).

Nonmarket Economy Status for the PRC

The Department has treated the PRC as a nonmarket economy (NME) country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345, 49346 (September 27, 2001). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. No party in this investigation has requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, see *Preliminary Determination*, 68 FR at 13676.

Separate Rate

In our preliminary determination, we found that SVW had met the criteria for receiving a separate antidumping rate. We have not received any information since the preliminary determination which would warrant reconsideration of our separate-rate determination with respect to this company. Therefore, we continue to find that SVW should be assigned an individual dumping margin.

Surrogate Country

For purposes of the final determination, we continue to find that India is the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see Preliminary Determination, 68 FR at 13679.

PRC-Wide Rate and Use of Facts Otherwise Available

As explained in the Department's *Preliminary Determination*, SVW was the only exporter to respond to the Department's questionnaire and cooperate in this investigation. Therefore, we have continued to calculate a company-specific rate for SVW only. However, in the preliminary determination, we stated that our review of U.S. import statistics from the PRC revealed that SVW did not account for all imports into the United States from the PRC. For this reason, we determined that some PRC exporters of subject merchandise failed to cooperate in this investigation. In accordance with our standard practice, as adverse facts available, we are assigning as the PRC-wide rate the higher of: (1) the highest margin listed in the notice of initiation; or (2) the margin calculated for SVW. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying decision memorandum at *Comment 1*. For purposes of the final determination of this investigation, we are using the margin stated in the notice of initiation (*i.e.*, 97.86 percent) as adverse facts available because it is higher than the margin we calculated for SVW.

Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes to the margin calculations. For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue to suspend liquidation of all entries of PVA from the PRC, except for PVA exported by SVW, that are entered, or withdrawn from warehouse, for consumption on or after March 20, 2003, the date of publication of our preliminary determination. Regarding SVW, we have calculated a margin for this final determination which is not *de minimis*. Therefore, we are directing the BCBP to begin suspending liquidation of entries of PVA exported by SVW that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this determination in the **Federal Register**. The BCBP shall require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice.

The dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Sinopec Sichuan Vinylon Works	7.40
PRC-wide	97.86

The PRC-wide rate applies to all entries of the subject merchandise except for entries from SVW.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the BCBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: August 4, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

Appendix Issues in the Decision Memorandum

Comments

1. Valuation of an Input Supplied by a Joint Venture Partner
2. Treatment of Acetylene Tail Gas as Co-Product vs. By-Product
3. Cost Allocation Methodology for Acetylene and Acetylene Tail Gas
4. Adjustment of Factors of Production for Vinyl Acetate Monomer (VAM)
5. Surrogate Value for Activated Carbon
6. Surrogate Value for Natural Gas
7. Valuation of N-Methyl-2-Pyrrolidone (NMP)
8. Clerical Error in the Preliminary Determination
9. Application of a By-Product Credit in the Calculation of the Surrogate Financial Ratios
10. Adjustments to the Surrogate Financial Ratios for Differences in Integration Levels
11. Surrogate Value for Ocean Freight

[FR Doc. 03–20319 Filed 8–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–850]

Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Jill Pollack at (202) 482–0656 and (202) 482–4593, respectively, AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Final Determination

We determine that polyvinyl alcohol (PVA) from the Republic of Korea (Korea) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Background

The preliminary determination in this investigation was issued on March 14, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol from the Republic of Korea*, 68 FR 13681 (March 20, 2003) *(Preliminary Determination)*.

Since the preliminary determination, the following events have occurred. On March 3, 2003, the petitioners agreed to revise the scope of the companion case on PVA from Japan to exclude certain types of PVA covalently bonded with diacetoneacrylamide. The petitioners' submission was made in response to a request by Japan VAM and POVAL Co., Ltd., one of the mandatory respondents in the companion Japanese case.

Because these comments relate to PVA in general, we find that they are applicable to this proceeding. Accordingly, as we did in the preliminary determination, we have modified the scope to conform to that set forth in the companion Japanese proceeding, as described below. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan*, 68 FR 19510 (April 21, 2003).

On March 12, 2003, DC Chemical Company, Ltd. (DC CHEM), the mandatory respondent in this investigation, filed a request to exclude from the scope of this investigation certain grades of PVA in which the PVA is covalently bonded with itaconic acid.

On March 27, 2003, DC CHEM notified the Department that it no longer intended to participate in this investigation. For further discussion, see the ''Facts Available (FA)'' section of this notice.

On April 1, 2003, the petitioners commented on DC CHEM's exclusion request. For further discussion, see the ''Scope Comments'' section of this notice.

Scope of the Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs

purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

On March 12, 2003, DC CHEM filed a request to exclude from the scope of this investigation certain grades of a copolymer of PVA in which the PVA is covalently bonded with itaconic acid. On April 1, 2003, the petitioners commented on DC CHEM's exclusion request. In their comments, the petitioners state that three of the five grades of PVA listed in DC CHEM's exclusion request (*i.e.*, CL–05, CL–05A, and CL–05S) are not subject to this investigation because their level of hydrolysis is less than 80 percent. Regarding the remaining grades, the petitioners comment that PVA covalently bonded with itaconic acid (a type of carboxylic acid) for use in paper applications is also outside the scope of this investigation. *See* item 7 in the ''Scope of the Investigation'' section of this notice, above. However, the petitioners do not agree to exclude PVA covalently bonded with itaconic acid for non-paper applications because, they assert, these products are directly competitive with products produced by the domestic industry.

We have analyzed DC CHEM's request and the petitioners' objections and we find no modifications to the scope are warranted. Because PVA covalently bonded with itaconic acid for non-paper applications is clearly within the scope of the investigation, we find no basis on which to exclude these products.

Period of Investigation

The period of investigation (POI) is July 1, 2001, through June 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2002).

Analysis of Comments Received

On April 11, 2003, we received comments from the petitioners in response to the preliminary determination. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the *Decision Memo*, which is on file in the Central Records Unit, room B–099, of the main Department building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memo* are identical in content.

Facts Available (FA)

The mandatory respondent in this case, DC CHEM, notified the Department on March 27, 2003, that it no longer intended to participate in the investigation. Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, *inter alia,* the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil,* 65 FR 5554, 5567 (February 4, 2000).

In the instant investigation, the accuracy and completeness of the submitted information has not been established because the respondent did not agree to verification of all of its responses. Without verified data on the record, the Department cannot calculate accurate margins. Therefore, the respondent's refusal to allow a complete verification has hindered the calculation of accurate dumping margins and impeded the proceeding within the meaning of section 776(a)(2)(C) of the Act. As a result, application of facts available is appropriate. Moreover, by refusing to allow the Department to verify all of its responses, the respondent did not act to the best of its ability as required by section 776(b) of the Act. Consequently, we have determined to make an adverse inference in determining an antidumping duty margin for DC CHEM.

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* 19 CFR 351.308 (c) and (d); *see also* the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 870 (1994).

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.*

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this final determination, we used information submitted by DC CHEM on the record of this investigation. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see* the September 25, 2002, Initiation Checklist, on file in the Central Records Unit, Room B–099, of the Main Commerce Department building, for a discussion of the margin calculations in the petition). In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based. *See* the August 4, 2003, memorandum to the file from the team entitled ''Corroboration of Data Contained in the Petition for Assigning Facts Available Rates'' (Corroboration Memo).

Export Price

With respect to the margins in the petition, EP was based on POI price quotes for the sale of fully-hydrolyzed PVA produced by DC CHEM to customers in the United States. The petitioners calculated net U.S. prices for PVA by deducting certain movement charges and a distributor mark-up, where applicable.

We corroborated the U.S. prices from the petition by comparing them to prices of comparable products reported by DC CHEM. We found that the petitioners' price quotes were comparable to the price information submitted by DC CHEM. Therefore, we find that the petitioners' information for U.S. price has probative value. For further discussion, see the Corroboration Memo.

Normal Value

The petitioners based NV on a home-market price quote from DC CHEM for fully-hydrolyzed PVA of a comparable grade to the products exported to the United States during the POI. This price quote was contemporaneous with the U.S. price quotes used as the basis for EP. We corroborated the home-market price from the petition by comparing it to prices of comparable products sold by DC CHEM. We found that the petitioners' price quote was comparable to the price information submitted by DC CHEM. Therefore, we find that the petitioners' information for home-market price has probative value. See the Corroboration Memo.

In addition, the petitioners alleged that sales of PVA in the home market were made at prices below the fully-absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we found reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. *See Notice of Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol From Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore,* 67 FR 61591, 61594 (October 1, 2002) (*Initiation Notice*). Accordingly, the Department initiated a country-wide cost investigation. Pursuant to section 773(b)(3) of the Act, COP consisted of the cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing expenses. The petitioners calculated COP based on their own production experience, adjusted for known differences between costs incurred to manufacture PVA in the United States and Korea. We corroborated the COP from the petition by comparing it to the COP of comparable products sold by DC CHEM. We found that the petitioners' calculated COP was comparable to DC CHEM's COP. Therefore, we find that the petitioners' calculated COP has probative value. See the Corroboration Memo.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Korea on constructed value (CV). The petitioners calculated CV using the same COM, SG&A, and financial expense figures they used to compute the COP. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit based on DC CHEM's 2001 financial statements. The petitioners' calculation of profit was based on operating profit rather than the net income of the producer. Therefore, we recalculated the CV profit rate to include non-operating items. Because this calculation resulted in a loss, we used a profit rate of zero for purposes of initiation.

For purposes of the AFA rate we have calculated for this final determination, however, we do not believe it is appropriate to exclude profit from the margin calculations because to do so would not be an adverse inference. Consequently, we have revised our calculation of the profit rate to use a rate derived from the publicly available 2001 financial statements of another Korean petrochemical company, LG Petrochemical. For further discussion, see the *Decision Memo* at Comment 1.

Therefore, based on our efforts described above to corroborate information contained in the petition and in accordance with 776(c) of the Act, we consider the margins in the notice of initiation, as adjusted, to be corroborated to the extent practicable for purposes of this final determination. *See* the Corroboration Memo.

Accordingly, in selecting AFA with respect to DC CHEM, we have applied the margin rate of 38.74 percent, which is the highest estimated dumping margin submitted in the petition, used in the notice of initiation, and subsequently adjusted as explained above. *See* the *Initiation Notice,* 67 FR at 61593, and the *Decision Memo* at Comment 1.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated ''All Others'' rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis*, and FA margins to establish the ''All Others'' rate. Where the data do not permit weight-averaging such rates, the SAA provides that we may use other reasonable methods. *See* the SAA at 873. Because the petition contained two estimated dumping margins, we have used these two estimated dumping margins, as adjusted for the notices of initiation and final determination, to create an ''All Others'' rate based on a simple average. Therefore, we have calculated the margin of 32.08 percent as the ''All Others'' rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape from India,* 64 FR 19123, 19124 (April 19, 1999).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue to suspend all entries of PVA from Korea that are entered, or withdrawn from warehouse, for consumption on or after March 20, 2003, the date of publication of the preliminary determination. The BCBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice.

The dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
DC Chemical Company, Ltd	38.74
All Others	32.08

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material

injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the BCBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: August 4, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20320 Filed 8–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 7, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India. We gave interested parties an opportunity to comment on the preliminary results and have made certain changes for the final results. We find that certain companies reviewed sold stainless steel bar from India in the United States below normal value during the period February 1, 2001 through January 31, 2002.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Cole Kyle or Ryan Langan, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1503 or (202) 482–2613, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2003, the Department published the *Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India (''Preliminary Results''*) in the **Federal Register** (68 FR 11058).

In April and May 2003, we conducted verifications of the sales and cost of production (''COP'') questionnaire responses submitted by Isibars Limited (''Isibars''), Venus Wire Industries Limited (''Venus''), and the Viraj Group, Ltd. (''Viraj''). We issued verification reports in May and June 2003.

After inviting parties to comment on the *Preliminary Results* of this review, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL–CIO/CLC) (collectively, ''the petitioners''), and Mukand, Ltd. (''Mukand''), Venus Wire Industries Limited (''Venus''), and the Viraj Group, Ltd. (''Viraj'') filed case and rebuttal briefs,[1] respectively, on June 30 and July 9, 2003.

Scope of the Order

Merchandise covered by the order is shipments of stainless steel bar (''SSB''). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which, if less than 4.75 mm in thickness, have a width measuring at least 10 times the thickness, or, if 4.75 mm or more in thickness, have a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum for the Final Results of the Administrative Review of Stainless Steel Bar from India* (''*Decision Memorandum*'') dated August 4, 2003, which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded, all of which are in the *Decision Memorandum,* is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building (''CRU''). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Facts Otherwise Available

We continue to find that Mukand did not cooperate to the best of its ability in this review and are assigning Mukand an antidumping duty rate based on total adverse facts available. *See* section 776 of the Tariff Act of 1930, as amended effective January 1, 1995 (''the Act''), by the Uruguay Round Agreements Act (''URAA''). *See also Preliminary Results* and *Decision Memorandum* at Comment 1.

Fair Value Comparisons

To determine whether sales of stainless steel bar from India to the United States were made at less than fair value, we compared export price (''EP'') or constructed export price

[1] The other company in this review, Isibars Limited, did not file case or rebuttal briefs.

(''CEP'') to normal value (''NV''). Our calculations followed the methodologies described in the *Preliminary Results*, except as noted below and in the final results calculation memoranda cited below, which are on file in the CRU.

Export Price and Constructed Export Price

For sales by Isibars' and Venus to the United States, we used EP as defined in section 772(a) of the Act. For Viraj's sales to the United States, we used CEP as defined in section 772(b) of the Act.

Isibars

In the preliminary results, we adjusted Isibars' U.S. sales price for an excise tax that appeared to be included in the price. We are not making this adjustment for the final results (*see Decision Memorandum* at Comment 8). We recalculated Isibars' indirect selling expenses to include bad debts written off (*see Decision Memorandum* at Comment 7). Finally, we revised Isibars' reported sales invoice dates and credit expenses for certain sales. *See Isibars Limited Final Results Calculation Memorandum* (''*Isibars Calculation Memorandum*'') dated August 4, 2003.

Venus

For certain U.S. sales, we revised the reported payment date and credit expenses (*see Decision Memorandum* at Comment 17). We revised the calculation of indirect selling expenses. Specifically, we revised the calculation of directors' salaries and allocated the indirect selling expenses over the cost of goods sold for the POR. We revised the reported quantity for one U.S. sale and revised the sales invoice date on another U.S. sale. For further discussion of these adjustments, *see Venus Wire Industries Limited Final Results Calculation Memorandum* (''*Venus Calculation Memorandum*'') dated August 4, 2003.

Normal Value

1. Calculation of COP

Isibars

We adjusted Isibars' reported cost of manufacture (''COM'') to include payments for the lease of steelmaking assets. We also adjusted Isibars' reported COM for the yield loss incurred on the variable and fixed overhead cost of billets used in the production of subject merchandise. We adjusted the denominators of Isibars' reported general and administrative (''G&A'') and interest expense ratios (used to determine product-specific G&A and interest expenses) to exclude administrative labor costs and to include the payment for the lease of steelmaking assets. We recalculated Isibars' reported interest expense ratio and per-unit interest expense rate to reflect one interest expense ratio based on the highest level of consolidation. We adjusted Isibars', Zenstar's and Isinox' interest expenses, where applicable, to include all foreign exchange gains and losses in each company's interest expenses. For Isinox, we excluded foreign exchange gains and losses from its G&A expenses. Because Isibars did not provide the COP data for one product control number, we assigned that product control number the costs of a similar product.

For a detailed discussion of the above-mentioned adjustments, *see Isibars Cost of Production and Constructed Value Calculation Adjustments for the Final Results* dated August 4, 2003, and the *Decision Memorandum* at Comments 2–6.

Venus

We adjusted Venus' reported COM to include additional material costs based on corrected production quantities. We adjusted Venus' reported COM for process and yield loss incurred during fiscal year (''FY'') 2001–2002. Because Venus was able to explain its yield loss methodology at verification, we allowed its scrap offset for the final results. Further, we adjusted Venus' reported fixed overhead per-unit costs for depreciation expenses incurred for FY 2001–2002.

We adjusted the numerator of Venus' reported G&A expenses to include donations and losses on the sale of assets and to exclude prior-period adjustments. We adjusted the denominators of Venus' reported G&A and interest expense ratios (used to determine product-specific G&A and interest expenses) to reflect cost of goods sold for FY 2001–2002. Finally, we recalculated Venus' reported interest expenses to include net foreign exchange gains and losses.

For a detailed discussion of the above-mentioned adjustments, *see Venus Wire Industries Limited Cost of Production and Constructed Value Calculation Adjustments for the Final Results* dated August 4, 2003, and the *Decision Memorandum* at Comments 15–19.

Viraj

We revised Viraj Alloys Limited's (''VAL'') reported depreciation expense to account for an additional depreciation expense that resulted from a change in depreciation methods. Because this depreciation expense covers multiple accounting periods, we amortized the amount based on the average remaining life of VAL's fixed assets in order to determine what portion should be allocated for the POR and included it in the G&A expense ratio calculation. We included the POR's portion of the additional depreciation expense in the denominator of the G&A expense rate calculation.

VAL calculated its interest expense rate based on total interest expenses and total cost of sales (''COS'') of the Viraj Group of companies. Because the Viraj Group of companies does not prepare consolidated financial statements, we revised VAL's interest expense rate calculation using only VAL's interest expense and COS. In addition, we excluded VAL's waived interest expenses from its interest expense ratio calculation.

For a detailed discussion of the above-mentioned adjustments, *see Cost of Production and Constructed Value Calculation Adjustments for the Final Results* (''*Viraj Cost Calculation Memorandum*'') dated August 4, 2003, and the *Decision Memorandum* at Comments 11–14.

2. Results of the COP Test

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of a respondent's sales of a given product are made at prices below the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard those sales of that product because we determine that in such instances the below-cost sales represent ''substantial quantities'' within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales are made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

Isibars and Venus each made more than 20 percent of their comparison market sales, for certain products, at prices less than the COP and, thus, we disregarded these sales from the calculation of NV. We found that Viraj did not make more than 20 percent of its sales of any product at prices less than the COP. So, we have included all of Viraj's home market sales in the calculation of NV, in accordance with section 773(b)(1).

3. Calculation of NV

Isibars

We accounted for rebates in the calculation of NV. (We overlooked rebates inadvertently in our calculations for the preliminary results.) We revised the sizes and control numbers reported for certain sales due to minor corrections presented at verification. We recalculated indirect selling expenses to include bad debts written off (*see Decision Memorandum* at Comment 3). Also, we recalculated imputed credit expenses, and we adjusted certain sales quantities for returned sales. In addition, we revised payment dates and payment terms for certain sales. For a further discussion of these adjustments, *see Isibars Calculation Memorandum*.

Venus

We revised the calculation of indirect selling expenses. Specifically, we revised Venus' calculation of directors' salaries and allocated the indirect selling expenses over the cost of goods sold for the POR (*see Venus Calculation Memorandum*).

Viraj

We revised a sales invoice date based on information provided at verification. *See Viraj Group, Ltd. Final Results Calculation Memorandum* dated August 4, 2003.

Calculation of Constructed Value

We calculated constructed value (''CV'') based on the same methodology described in the *Preliminary Results* except that we made all of the same above-described adjustments to CV that we made to COP for Isibars and Venus. For Viraj, we adjusted Viraj Impoexpo Ltd.''s (''VIL'') raw material costs based on VAL's COP. Thus, we revised VIL's raw material costs to reflect the adjustments made to VAL's G&A and interest expense ratios (*see* supra at ''Calculation of COP''). In addition, VIL excluded certain ''usance'' expenses and bank charges from the interest expense ratio calculation. We revised VIL's interest expense to exclude only the bank charges which were reported as selling expenses. For a detailed discussion of the above-mentioned adjustments, *see Viraj Cost Calculation Memorandum* and the *Decision Memorandum* at Comments 9 and 11–14.

Final Results of Review

We determine that the following percentage margins exist for the period February 1, 2001, through January 31, 2002:

Exporter/manufacturer	Weighted-average margin percentage
Isibars Limited	4.59
Mukand, Ltd	21.02
Venus Wire Industries Limited	*0.02
Viraj Group, Ltd	0.00

*(*De minimis*)

Assessment Rates

The Department shall determine, and the United States Bureau of Customs and Border Protection (''BCBP'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated exporter/importer (or customer)-specific assessment rates for merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per-unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these final results of review.

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Isibars Limited and Mukand, Ltd. will be the rate indicated above; for Venus Wire Industries Limited and the Viraj Group, Ltd., which have *de minimis* or zeros rates, no antidumping duty deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) the cash deposit rate for all other exporters will continue to be 12.45 percent, the ''all others'' rate established in the less-than-fair-value investigation. *See Stainless Steel Bar from India; Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994).

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 4, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

Appendix 1

Issues in Decision Memorandum

Comment 1. Use of Adverse Facts Available for Mukand
Comment 2. Isibars' Start-up Adjustment
Comment 3. Isibars' Variable and Fixed Overhead Costs
Comment 4. Isibars' General and Administrative Expenses
Comment 5. Isibars' Offsets for Reimbursements of Insurance Claims
Comment 6. Isibars' Interest Expenses
Comment 7. Isibars' Indirect Selling Expenses
Comment 8. Isibars' Excise Taxes
Comment 9. Viraj's Selling Expenses
Comment 10. Collapsing the Viraj Group of Companies

Comment 11. Viraj's Calculation of Depreciation
Comment 12. Viraj's Forgiven Interest Expense
Comment 13. Viraj's Unconsolidated Financial Statements
Comment 14. Viraj's Offset To Interest Expenses
Comment 15. Venus' Scrap Realization Offset
Comment 16. Venus' General and Administrative Expense Ratio Adjustments
Comment 17. Venus' Interest Expense Ratio Adjustment
Comment 18. Venus' Depreciation Expense and Repairs and Maintenance Expense
Comment 19. Venus' Foreign Exchange Gains and Losses
Comment 20. Venus' Income Tax Provision

[FR Doc. 03–20321 Filed 8–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580–851]

Notice of Countervailing Duty Order: Dynamic Random Access Memory Semiconductors from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Ryan Langan, Jesse Cortes, or Daniel J. Alexy, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–2613, (202) 482–3986, and (202) 482–1540, respectively.

Scope of Order

The products covered by this order are dynamic random access memory semiconductors (''DRAMS'') from the Republic of Korea (''ROK''), whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this order additionally includes memory modules containing DRAMS from the ROK. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This order also covers future DRAMS module types.

The scope of this order additionally includes, but is not limited to, video random access memory and synchronous graphics random access memory, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this order are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with the U.S. Bureau of Customs and Border Protection (''Customs'') that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this order does not include DRAMS or memory modules that are re-imported for repair or replacement.

The DRAMS subject to this order are currently classifiable under subheadings 8542.21.8005 and 8542.21.8021 through 8542.21.8029 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The memory modules containing DRAMS from the ROK, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Removable memory modules placed on motherboards are classifiable under subheading 8471.50.0085. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Countervailing Duty Order

On July 28, 2003, the Department published in the **Federal Register** (68 FR 44290), its ''Notice of Amended Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea'' in which the final countervailing duty rate for Hynix Semiconductor, Inc. and the ''all others'' rate were revised. The revised rates are listed below. The finding that Samsung Electronics Co., Ltd. (''SEC'') received *de minimis* subsidies did not change.

On August 4, 2003, in accordance with section 705(d) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''), the U.S. International Trade Commission (''ITC'') notified the Department that a U.S. industry is ''materially injured,'' within the meaning of section 705(b)(1)(A) of the Act, by reason of imports of DRAMS from the Republic of Korea.

Therefore, in accordance with section 706(a)(3) of the Act, the Department will direct Customs to assess countervailing duties for all relevant entries of DRAMS from the ROK. For all producers and exporters of DRAMS from the ROK, except for SEC, which is excluded from this countervailing duty order, countervailing duties will be assessed on all unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after April 7, 2003, the date on which the Department published its notice of affirmative preliminary determination in the **Federal Register**.

On or after the date of publication of this notice in the Federal Register, Customs officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the net subsidy rate, as noted below. The ''All Others'' rate applies to all ROK exporters of subject merchandise not specifically listed, except for SEC, which is excluded from this countervailing duty order. The cash deposit rates are as follows:

Producer/Exporter	Net Subsidy Rate
Hynix Semiconductor Inc. (formerly, Hyundai Electronics Industries Co., Ltd.)	44.29 percent
All Others44.29 percent.	

This notice constitutes the countervailing duty order with respect to DRAMS from the ROK, pursuant to section 706(a) of the Act. Interested parties may contact the Central Records Unit, Room B-099 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

These countervailing duty orders are published in accordance with sections 706(a) and 777(i) of the Act and 19 CFR 351.211.

Dated: August 5, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–20421 Filed 8–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Commission, respecting Carbon and Certain Alloy Steel Wire Rod from Mexico (Secretariat File No. USA–MEX–2002–1904–10).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the complainants, the panel review is terminated as of August 5, 2003. No panel has been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: August 5, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–20349 Filed 8–8–03; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061203I]

Small Takes of Marine Mammals Incidental to Specified Activities; Movement of Steel Drilling Caisson through the Beaufort Sea from Cross Island, McCovey Prospect to Herschel Island, Yukon Territory

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

ACTION: Notice of issuance of incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals by harassment incidental to harbor activities related to the movement of the steel drilling caisson (SDC) through the Beaufort Sea has been issued to EnCana Oil and Gas, Inc. (EnCana).

DATES: Effective from August 1, 2003 to July 31, 2004

ADDRESSES: A copy of the IHA and/or the application is available by writing to Ms. Kaja Brix, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, (301) 713–2322, ext 163 or Brad Smith, (907) 271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 14, 2003, NMFS received an application from EnCana requesting an authorization for the harassment of small numbers of five species of marine mammals incidental to movement of the SDC from Cross Island, McCovey Prospect, AK through the Beaufort Sea to Herschel Island, Yukon Territory and

associated activities beginning on August 1, 2003. The SDC will lift-off from its current location and will be towed to the new set down location. Once the SDC reaches Herschel Island, it will go into cold stack mode. Helicopter supported one-day reconnaissance trips to the SDC may occur to check on winterization conditions on-board the SDC. A detailed description of these activities proposed for 2003–2004 is contained in the application (Lynx Enterprises, Inc., 2003), which is available upon request (see **ADDRESSES**).

Description of Marine Mammals Affected by the Activity

The Beaufort Sea supports many marine mammals under NMFS jurisdiction, including bowhead whales (*Balaena mysticetus*), beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*) and spotted seals (*Phoca largha*). Descriptions of the biology, distribution, and current status of these species can be found in NMFS Stock Assessment Reports (2000, 1999, and 1997). Please refer to those documents for more information on these species. These documents can be downloaded electronically from: *http://www.nmfs.noaa.gov/pr/PR2/Stock__Assessment__Program/individual__sars.html*.

Comments and Responses

On June 8, 2003 (68 FR 36572), NMFS published a notice of receipt and a 30–day public comment period was provided on the application and proposed authorization. That notice described the activity and anticipated effects on marine mammals. The only comments received were from the Marine Mammal Commission (Commission).

Comment 1: The Commission believes that the NMFS's preliminary determinations are reasonable, provided that the proposed mitigation and monitoring activities are adequate to detect marine mammals in the vicinity of the proposed operations and to ensure that marine mammals are not being taken in unanticipated ways or numbers. Clarification should be provided concerning the circumstances under which such monitoring would not occur, and a determination made as to whether non-negligible impacts or taking other than by harassment may occur during such periods.

Response: The monitoring on the SDC will continue 24 hours per day except when the SDC is in cold-stack between approximately August 31, 2003 and mid-October. Monitoring will begin just prior to coming out of cold stack in preparation for movement that is expected to commence on or about August 1st.

Comment 2: NMFS may wish to suggest to the applicant that it conduct an acoustic monitoring program, in addition to the proposed visual monitoring. Acoustic monitoring would provide more data on the actual acoustic source levels associated with the proposed activity.

Response: In 1991, ARCO Alaska, Incorporated conducted a marine mammal monitoring program at Cabot prospect in the Beaufort Sea. The marine mammal monitoring program included the physical acoustic characterization of the drilling platform and the surrounding area, passive acoustic monitoring of underwater sounds produced by marine mammals, and surface monitoring for operational and environmental conditions and marine mammal sightings. Results of this monitoring program can be found in the Final Report for the Site Specific Monitoring Plan for Cabot Prospect by Coastal & Offshore Pacific Corporation. A copy of this Final Report can be obtained by contacting NMFS (see **ADDRESSES**). As a result of this earlier acoustical monitoring, an acoustic monitoring program is not warranted.

Comment 3: By monitoring calling rates for the relevant species before, during, and after the activity, another dataset could be obtained on the behavioral impacts of the activities.

Response: The monitoring plans for EnCana to monitor marine mammal impacts were the subject of scientific peer-review meetings held on 8–9 November 2000, in Seattle, WA; October 30–31, 2002, in Anchorage, AK; and June 24–25, 2003 in Seattle, WA. Those meetings provided the required dialogue necessary for ensuring that monitoring programs in Arctic waters provided the necessary information to ensure that impacts are (or are not) negligible. NMFS continues to encourage the Commission's participation in these meetings.

Comment 4: NMFS should also ensure that the application has completed negotiations with the Alaska Eskimo Whaling Commission (AEWC) and affected villages Whaling Captains Associations to amend the existing Conflict Avoidance Agreement (CAA) and Plan of Cooperation, prior to granting the authorization.

Response: EnCana amended the existing CAA and Plan of Cooperation with the AEWC on June 9, 2003, as required under this IHA.

Mitigation

During mobilization of the SDC from Cross Island at the McCovey Prospect through the Beaufort Sea to Herschel Island, EnCana will have on-board marine mammal monitors throughout the transit. The program will commence with the reoccupation of SDC at the current McCovey deployment and will continue on a nearly 24–hour basis until the rig exits U.S. waters and goes into cold stack mode in Canada.

EnCana proposes to mitigate the potential negative impacts from its relocation and supply removal activities by planning the timing of operations in such a way as to reduce the production of noise during the fall bowhead whale migration. This includes putting the SDC into cold stack mode during the entire bowhead migration period (approximately late-August through mid-October). In addition to these mitigation measures, EnCana worked with the AEWC, North Slope Borough, and other whaling communities and amended the existing CAA to include the 2003 relocation to eliminate impacts to subsistence hunting of bowheads and thereby on bowheads themselves.

Monitoring

As part of its application, EnCana will have a visual monitoring program for assessing impacts to marine mammals during the SDC's transit from Cross Island, McCovey Prospect to Herschel Island.

EnCana will initiate a comprehensive training program for all potential marine mammal observers that includes learning the identification and behavior of all local species known to use the areas where EnCana will be operating. This training will be conducted by professional marine biologists and experienced Native observers participating in the monitoring program. The observer protocol is to scan the area around vessels and the SDC with binoculars of sufficient power. Range finding equipment will be supplied to observers in order to better estimate distances. Observers would collect data on the presence, distribution, and behavior of marine mammals relative to EnCana activities as well as climatic conditions at the time of marine mammal sightings. Observations would be made on a nearly 24–hour basis from the time the SDC leaves Cross Island until the SDC crosses the Canadian border or, if the backup deployment in U.S. waters is used, is placed in cold stack mode. If the backup deployment in U.S. waters is used and re-supply efforts are necessary between the end of the fall bowhead whale harvest and ice-

over, observers would be re-deployed on the SDC and supply vessels. All personnel stationed aboard the SDC during the open water season of 2003 would also receive training on marine mammal monitoring and utilize marine mammal reporting forms to document any incidental takes of marine mammals.

Reporting

All monitoring data collected will be reported to NMFS and the U.S. Fish and Wildlife Service on a weekly basis. EnCana must provide a final report on 2003–2004 activities to NMFS within 90 days of the completion of the activity. This report will provide dates and locations of the SDC movements and other operational activities, weather conditions, dates and locations of any activities related to monitoring the effects on marine mammals, and the methods, results, and interpretation of all monitoring activities, including estimates of the level and type of take, species name and numbers of each species observed, direction of movement of species, and any observed changes or modifications in behavior.

Endangered Species Act (ESA) Consultation

A biological opinion on oil and gas exploration was issued on May 25, 2001. NMFS has issued an Incidental Take Statement, pursuant to section 7 of the ESA.

National Environmental Policy Act (NEPA)

In 1997, NMFS prepared and released an EA that addressed the impacts on the human environment from issuance of an authorization for taking marine mammals incidental to moving an oil drilling structure through the Beaufort Sea during the summer and conducting oil exploration activities in the eastern Beaufort Sea and the alternatives to that proposed action. A Finding of No Significant Impact was signed on September 25, 1997. Because the action discussed in this document is not substantially different from the 1997 action, and because no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation, this action is categorically excluded from further review under NOAA Administrative Order 216–6. A copy of that EA is available upon request (see **ADDRESSES**).

Determinations

NMFS has determined that the short-term impact of SDC mobilization from Cross Island, McCovey Prospect, AK through the Beaufort Sea to Herschel Island, Yukon Territory, and associated activities will result, at worst, in a temporary modification in behavior by certain species of whales and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise or visual cues, this behavioral change is expected to have a negligible impact on the survival and recruitment of stocks.

While the number of potential incidental harassment takes will depend on the year-to-year distribution and abundance of marine mammals in the area of operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and there is no potential for temporary or permanent hearing impairment as a result of the activities. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the relocation route.

The measures undertaken to ensure that the SDC relocation will not have an adverse impact on subsistence activities are the CAA, Plan of Cooperation, and an operation schedule prior to the annual bowhead whale subsistence hunt, as amended on June 9, 2003.

Authorization

Authority: NMFS has issued an IHA to EnCana for the harassment of marine mammals incidental to movement of a SDC from Cross Island, McCovey Prospect, AK through the Beaufort Sea to Herschel Island, Yukon Territory, and associated activities. The issuance of this IHA is contingent upon incorporation of the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: August 5, 2003.

Donna Wieting,

Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–20388 Filed 8–8–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; Information Collection 3038–0031, procurement contracts.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR described the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Steven A. Grossman at CFTC, (202) 418–5192; FAX; (202) 418–5529; e-mail: *sgrossman@cftc.gov* and refer to OMB Control No. 3038–0031.

SUPPLEMENTARY INFORMATION:

Title: Procurement Contracts, OMB Control No. 3038–0031. This is a request for extension of a currently approved information collection.

Abstract: This information collection consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

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 the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on June 4, 2003 (68 FR 33479).

Burden statement: The respondent burden for this collection is estimated to average 2 hours per response. This estimate 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; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 180.

Estimated number of responses: 180.

Estimated total annual burden on respondents: 360 hours.

Frequency of collection: annually.

Send comments regarding the burden estimated or any other aspect of the

information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0031 in any correspondence.

Steven A. Grossman, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for CFTC, 725 17th Street, Washington, DC 20503.

Issued in Washington, DC, on August 5, 2003.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 03–20343 Filed 8–8–03; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; Information Collection 3038–0019, Stocks of Grain in Licensed Warehouses.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Judith Payne at CFTC (202) 418–5286; FAX: (202) 418–5527; e-mail: *jpayne@cftc.gov* and refer to OMB Control No. 3038–0019.

SUPPLEMENTARY INFORMATION:

Title: Stocks of Grain in Licensed Warehouses, OMB Control No. 3038–0019. This is a request for extension of a currently approved information collection.

Abstract: Under Commission Rule 1.44, 17 CFR 1.44, contract markets must require operators of warehouses regular for delivery to keep records on stocks of commodities and make reports on call by the Commission. The rule is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

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 the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published on June 4, 2003 (68 FR 33478).

Burden statement: The respondent burden for this collection is estimated to average 1 hour per response. This estimate 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; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 3

Estimated number of responses: 156.

Estimated total annual burden on respondents: 156 hours.

Frequency of collection: Weekly.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0019 in any correspondence.

Judith Payne, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for CFTC, 725 17th Street, Washington, DC 20503.

Issued in Washington, DC, on August 5, 2003

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 03–20344 Filed 8–8–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information 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 September 10, 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 Information 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: August 5, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Extension.

Title: NCES Quick Response Information System.

Frequency: One time.

Affected Public: Individuals or households; not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 10,518.

Burden Hours: 7,889.

Abstract: The Quick Response Information System consists of two survey system components—Fast

Response Survey System for schools, districts, libraries and the Postsecondary Education Quick Information System for postsecondary institutions. The two survey systems are intended to be low burden, quick turnaround methods of information collection on education issues for which there is a policy need and no current relevant data. Surveys that have been conducted in these systems include surveys of telecommunications in schools, distance education and remedial activities in postsecondary institutions.

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 2286. 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 or to the e-mail address *Vivian.Reese@ed.gov.* 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 03–20338 Filed 8–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 10, 2003.

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 Information 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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 5, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Innovation and Improvement

Type of Review: New.

Title: Credit Enhancement for Charter School Facilities Program Performance Report.

Frequency: Semi-Annually, annually, one time material events.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses:16.

Burden Hours: 151.

Abstract: ED will use the information through this report to monitor and evaluate competitive grants. These grants are made to private, non-profits; governmental entities; and consortia of these organizations. These organizations will use the funds to leverage private capital to help charter schools construct, acquire, and renovate school facilities.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2327. 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 or to the e-mail address *vivian_reese@ed.gov.* 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 03–20339 Filed 8–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 15, 2003. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before October 10, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, 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 *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: August 6, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Reading First Annual Performance Report.

Abstract: This Annual Performance Report will allow the Department of Education to collect information required by the Reading First statute.

Additional Information: The Department is requesting emergency processing for the Reading First Annual Performance Report. The requested approval date is September 15, 2003. Emergency processing is necessary based on potential public harm. States receiving Reading First grants are required by statute to submit an annual performance report. This report is due within 60 days of the end of the Federal grant period, which ends on September 30, 2003. It is necessary to publish the annual performance report prior to the end of the grant period in order for States to comply with this requirement. Continued funding of Reading First State grants is dependent upon submission of this annual report documenting progress States are making in improving student achievement in reading.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 55. Burden Hours: 1,100.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2305. 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 or to the e-mail address *vivan.reese@ed.gov.* 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 03–20436 Filed 8–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 15, 2003. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before October 10, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, 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 *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: August 6, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: What Works Clearinghouse Database Forms and Customer Survey.

Abstract: The What Works Clearinghouse (WWC) public submission databases will allow members of the public to submit nominations for studies, interventions, and topics that they would like the WWC to review. The evaluation database will enable the WWC to provide the public with a directory of available outcome evaluations. Data from the customer survey will be used to create indicators of how successfully the WWC is meeting the needs of various groups of its users.

Additional Information: The Department is requesting emergency processing for this information collection with an OMB approval date of September 11. The time required for the normal clearance process may cause a delay in the collection that could potentially result in public harm. The What Works Clearinghouse (WWC) was conceptualized to help education decision makers—primarily practitioners and policymakers—respond to the emphasis in No Child Left Behind to use scientifically based research to select effective education interventions. The WWC will provide educators, policymakers, and the public with a central, independent, and trusted source scientific evidence of what works in education. The work of the WWC and thus, the products cannot proceed without some input from the public.

Frequency: Semi-Annually.

Affected Public: Individuals or households; Businesses or other for-profit; not-for-profit institutions; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,550. Burden Hours: 978.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2209. 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 or to the e-mail address *vivan.reese@ed.gov.* 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 Kathy Axt at her e-mail address *Kathy.Axt@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. 03–20437 Filed 8–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.021A]

Fulbright-Hays Group Projects Abroad Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2004.

Purpose of Program: The Fulbright-Hays Group Projects Abroad (GPA) Program supports overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development, or group research or study. This competition will not support advanced overseas intensive language projects.

Eligible Applicants: (1) Institutions of higher education, (2) State departments of education, (3) nonprofit private educational organizations, and (4) consortia of these entities.

Applications Available: August 18, 2003.

Deadline for Transmittal of applications: October 14, 2003.

Estimated Available Funds: The Administration has requested $2,715,000 for GPA Program new awards for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000—$80,000.

Estimated Average Size of Awards: $68,000.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract or the appendices. However, you must include your complete response to the selection criteria in the application narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 664.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Absolute Priority: This competition focuses on projects designed to meet the

priority in the regulations for this program (34 CFR 664.32(a)(2)).

Specific geographic regions of the world: A group project funded under this priority must focus on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Competitive Priority: Within the absolute priority specified in this application notice we will focus on projects that meet the following competitive priority.

Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools.

Under 34 CFR 75.105(c)(2)(i), 664.30(b), and 664.31(g) we award up to five (5) points to an application, depending upon how well the application meets the priority.

Invitational Priority: Within the absolute priority specified in this application notice, we are particularly interested in applications that meet the following invitational priority.

Group study projects that provide opportunities for nationally recruited undergraduate students to study in a foreign country for either a semester or a full academic year.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2004 under the GPA Program be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

An applicant who is unable to submit an application through the e-GRANTS system may submit a written request for a waiver of the electronic submission requirement. In the request, the applicant should explain the reason or reasons that prevent the applicant from using the Internet to submit the application. The request should be addressed to: Dr. Lungching Chiao, U.S. Department of Education, 1990 K Street, NW., Suite 6066, Washington, DC 20006–8521. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, an applicant is unable to submit an application electronically, the applicant must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The GPA Program—CFDA 84.021A is one of the programs included in the pilot project. If you are an applicant under the GPA Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time

during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC, time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system availability, you must contact either (1) The person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the GPA Program at: *http://e-grants.ed.gov.*

FOR FURTHER INFORMATION CONTACT: Lungching Chiao, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street, NW., Suite 6066, Washington, DC 20006–8521. Telephone: (202) 502–7624 or via Internet: *lungching.chiao@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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

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

You may also view this document in PDF at the following site: *http://www.ed.gov/offices/HEP/iegps/.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 22 U.S.C. 2452.

Dated: August 6, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–20434 Filed 8–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records for tracking telephone calls and correspondence from State personnel and parents about disability issues related to children with disabilities.

DATES: The Department seeks comments on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before September 10, 2003.

The Department filed a report describing the system of records covered by this notice with the Chair of the Senate Committee on Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 6, 2003. This system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on September 15, 2003 or (2) September 10, 2003, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about this system of records to Larry Wexler, Deputy, Monitoring & State Improvement Planning Division, Office of Special Education, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., room 3630, Mary E. Switzer Building, Washington, DC 20202. If you prefer to send your comments through the Internet, use the following address: *comments@ed.gov.* You must include the term ''OSEP TRACKING SYSTEM'' in the subject line of the electronic comment.

During and after the comment period, you may inspect all comments about this notice in room 3630, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Larry Wexler. Telephone: (202)–205–5390. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to OMB whenever the agency publishes a new or altered system of records. Each agency is also required to send copies of the report to the chair of the Senate Committee on Governmental Affairs and the chair of the House Committee on Governmental Reform.

Electronic Access to This Document

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

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

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Dated: August 6, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

For reasons discussed in the preamble, the Assistant Secretary for Special Education and Rehabilitative Services (OSERS) of the U.S. Department of Education (the Department) publishes a notice of a new system of records to read as follows:

18–16–01

SYSTEM NAME:

OSEP Customer Service Tracking System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Monitoring and State Improvement Planning Division, Office of Special Education Programs (OSEP), Office of Special Education and Rehabilitative Services (OSERS), Mary E. Switzer Building, 330 C Street, SW., Room 3630, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers parents, advocates, State personnel and other third parties who contact OSEP with inquiries or complaints related to special education. OSEP staff, especially the Customer Service Specialists (CSS), receive letters, e-mails, facsimiles and telephone calls from State personnel and parents about disability issues related to children with disabilities.

These complaints and inquiries are tracked by an electronic system that maintains customer demographic data, as well as information on the content of the complaints and inquiries. The system also allows OSEP to maintain a detailed history of the interactions between callers and/or writers and the CSS.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records relating to inquiries or complaints made to OSEP staff, including but not limited to: the writer's and/or caller's name; the name, age and type of disability of the child about whom the writer/caller is inquiring about; the writer's or caller's address, including an e-mail address; the school district involved in the inquiry or complaint; the writer's or caller's phone number; the issue that the writer and/or caller is raising; a recommendation from the CSS for further action; and comments from the CSS.

This notice does not cover records, including but not limited to letters, e-mails and facsimiles, sent by individuals to the Secretary, Deputy Secretary, Senior Officers such as the Assistant Secretary of OSERS and the Director of OSEP for whom the Department controls responses to such inquiries. Further, this notice does not cover the official correspondence files of OSEP, specifically the hard copies of official documents and electronic images of certain incoming and outgoing documents. These records are considered covered by the Department's system of records 18–01–01, Secretary's Communication Control System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I of the Individuals with Disabilities Education Act (IDEA), as amended, 20 U.S.C. Section 1402.

PURPOSE(S):

This system of records is maintained to provide its customers (parents, advocates and others) with more responsive, consistent service; to better track the large number of calls and other inquiries received; to provide trend analysis by issue; to develop a profile of the issues that arise in a certain State; to assist OSEP as a management tool in the preparation of reports, and to monitor State implementation of the IDEA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1998, under a computer matching agreement.

(1) *Freedom of Information Act (FOIA) Advice Disclosure*. The Department may disclose records to DOJ and OMB if the Department seeks advice regarding whether records maintained in the system of records must be released under the FOIA and the Privacy Act of 1974.

(2) *Disclosure to the DOJ*. The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(3) *Contract Disclosure*. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures*.

(a) *Introduction*. In the event that one of the following parties is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any of its components; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her official capacity where the DOJ is requested to provide or arrange for representation of the employee;

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ*. If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative disclosures*. If the Department determines that disclosure

of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses*. If the Department determines that disclosure of certain records to a party, counsel, representative or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Research Disclosure*. The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(6) *Congressional Member Disclosure*. The Department may disclose records to a Member of Congress from the record of an individual in response to an inquiry from the Member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(7) *Enforcement Disclosure*. In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISCLOSING OF RECORDS IN THE SYSTEM: STORAGE:

The information in the tracking system will be stored on a server maintained by the Department of Education. Records generated by the system will be maintained electronically on the server.

RETRIEVABILITY:

This system will only be accessible to Departmental contractors and employees of OSEP. Each record in this system can be retrieved by entering in any of the categories of information listed under the ''Categories of Records In This System'' in this notice.

SAFEGUARDS:

The primary users of this system, Monitoring and State Improvement Planning Division (MSIP) employees in OSEP, will enter a unique user ID as well as a password to enter the system. This user ID and password will be in addition to the user ID and password that all Department employees must enter to access the Department's computer system. Users will be required to change their passwords periodically, and they will not be allowed to repeat old passwords. Any individual attempting to log on who fails is locked out of the system after three attempts. Access after that time requires intervention by the system manager.

The computer system employed by the U.S. Department of Education offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need to know'' basis and controls individual users' ability to access and alter records within the system.

The location of the server includes safeguards and firewalls, including the physical security of the server room. In addition, the server is located in a secure room, with limited access only through a special pass. Further, all physical access to the site where the server is maintained is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with the National Archives and Records Administration (NARA) General Records Schedule 20, Item 1.c which provides disposal authorization for electronic files and hard-copy printouts created to monitor system usage. Records will be deleted or destroyed when the agency determines they are no longer needed for administrative, legal, audit, or other operational purposes.

SYSTEM MANAGERS AND ADDRESS:

Deputy, MSIP Division, Office of Special Education Programs, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Mary E. Switzer Building, Room 3630, 330 C Street, SW., Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists about you in the system of records, provide the system manager with your name or your child's name and your address. Your request for notification must also meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity. You may also present your request in person or make your request in writing to the system manager at the above address.

RECORD ACCESS PROCEDURES:

Request to access a record must also reasonably specify the record contents sought and otherwise meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to change the content of a record in this system of records, you must contact the system manager at the above address and follow the steps outlined in the Notification procedure. Requests to amend a record must also reasonably identify the record, specify the information being contested, provide in writing your reasons for requesting the change, and otherwise meet the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from parents, advocates, and other third parties that contact OSEP with concerns or complaints related to special education.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–20435 Filed 8–8–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; Comment request.

SUMMARY: The EIA has submitted the DOE–887, ''DOE Customer Surveys,'' to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by September 10, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. DOE–887, ''DOE Customer Surveys.''
2. Energy Information Administration.
3. OMB Number 1901–0302.
4. Three-year extension.
5. Voluntary.
6. DOE–887 will be used to contact users and beneficiaries of DOE products or other services to determine how DOE can better improve its services to meet their needs. Information is needed to make DOE products more effective, efficient, and responsive and at a lesser cost.
7. Respondents are users and beneficiaries of DOE products and services.
8. 12,500 hours (50,000 respondents times 1 response per year times .25 hours per response).

Please refer to the supporting statement for more information about the types of information collections that may be conducted. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, August 1, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–20381 Filed 8–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–14–001]

Bridgeline Gas Distribution LLC; Notice Shortening Comment Period

August 4, 2003.

On July 17, 2003, Bridgeline Gas Distribution LLC filed an Offer of Settlement in the above-docketed proceeding. Included in its filing was a request to shorten the period for filing initial and reply comments in response to the Offer of Settlement. Since there were no protests filed in the docket and the Commission Staff supports the Settlement, we are shortening the date for filing initial comments to and including August 8, 2003. Reply comments should be filed on or before August 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–20454 Filed 8–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–116–000, et al.]

NewCorp Resources Electric Cooperative, Inc., et al.; Electric Rate and Corporate Filings

July 31, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

1. NewCorp Resources Electric Cooperative, Inc.

[Docket Nos. EC03–116–000 and ER03–1116–000]

Take notice that on July 25, 2003, NewCorp Resources Electric Cooperative, Inc. (NewCorp) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 and 205 of the Federal Power Act, an application for approval of the transfer of certain assets from Cap Rock Energy, Inc. (CRE) to NewCorp. In addition, NewCorp proposes to change the service it provides to its wholesale customer from full requirements service under Tariff WP to transmission service under NewCorp's Open Access Transmission tariff, and also seeks approval of an administrative and maintenance services agreement. NewCorp states that it does not propose to increase its previously filed and accepted rates in connection with this filing. NewCorp proposes that these changes be allowed to take effect on September 1, 2003, and requests waiver of notice requirements to allow this effective date.

Comment Date: August 15, 2003.

2. Gilroy Energy Center, LLC, South Point Energy Center, LLC, Calpine Energy Services, L.P.

[Docket No. EC03–117–000]

Take notice that on July 25, 2003, Gilroy Energy Center, LLC, South Point Energy Center, LLC, and Calpine Energy Services, L.P. (Applicants) tendered for filing an application under section 203 of the Federal Power Act for approval of the disposition of jurisdictional

facilities related to generation projects located in the States of California and Arizona in connection with the financing of certain generation facilities in California.

Comment Date: August 15, 2003.

3. MDU Resources Group, Inc.

[Docket No. ES03–41–000]

Take notice that on July 25, 2003, MDU Resources Group, Inc. (MDU) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to 2.6 million in additional shares of common stock, with a par value of $1.00.

MDU also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: August 13, 2003.

4. NewCorp Resources Electric Cooperative, Inc.

[Docket No. ES03–42–000]

Take notice that on July 25, 2003, NewCorp Resources Electric Cooperative, Inc. (NewCorp) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to borrow $31.5 million under a loan from Beal Bank, S.S.B.

NewCorp also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: August 15, 2003.

5. Aquila, Inc.

[Docket No. ES03–43–000]

Take notice that on July 25, 2003, Aquila, Inc. (Aquila) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue (1) no more than $150 million of long-term convertible debt securities and (2) up to $100 million of shares of common stock of Aquila.

Aquila also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: August 18, 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 t 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, 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. 03–20347 Filed 8–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC03–69–000, et al.]

UniSource Energy Corporation, et al.; Electric Rate and Corporate Filings

August 1, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. UniSource Energy Corporation

[Docket No. AC03–69–000]

Take notice that on July 22, 2003, the UniSource Energy Corporation made a compliance filing pursuant to the accounting and reporting requirements set forth by the Commission in Order 631, Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations. The Commission directed jurisdictional entities to file journal entries and supporting information for any adjustments made that affect net income as a result of implementing the accounting rules contained in Order 631.

Comment Date: August 12, 2003.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL03–30–003]

Take notice that on July 28, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Section 13.2 of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's July 11, 2003 Order on Rehearing, 104 FERC ¶ 61,075 (2003), to reflect that competing requests are those that involve the same source or sink Control Area or controllable device/contract path interface.

The Midwest ISO has requested waiver of the sixty (60)-day effective date and an effective date of March 3, 2003.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it 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, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO also states that it will provide hard copies to any interested parties upon request.

Comment Date: August 27, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL03–35–003]

Take notice that on July 29, 2003, Midwest Independent Transmission System Operator, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) an amended compliance report pursuant to the Commission's May 21, 2003 order issued in Docket No. EL03–35–000, 103 FERC ¶ 61,210 (2003).

Comment Date: August 28, 2003.

4. PJM Interconnection, L.L.C.

[Docket No. ER03–703–001]

Take notice that on July 29, 2003, PJM Interconnection, L.L.C. (PJM), in compliance with the Commission's May 30, 2003 Order in this proceeding, 103 FERC ¶ 61,250, filed minor revisions to the Reliability Assurance Agreement Among Load-serving Entities in the PJM Control Area and the PJM West Reliability Assurance Agreement

Among Load-serving Entities in the PJM West Region.

PJM states that the compliance tariff sheets have an effective date of June 1, 2003, as established by the May 30 Order. PJM also states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM region and on all parties listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: August 19, 2003.

5. Pacific Gas and Electric Company

[Docket No. ER03–1120–000]

Take notice that on July 28, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing a revision to the Service Agreement for Wholesale Distribution Service (WDT Service Agreement) between PG&E and the Port of Oakland (Port). PG&E states that the WDT Service Agreement is submitted pursuant to the PG&E Wholesale Distribution Tariff (WDT), and permits PG&E to recover the ongoing costs for service required over PG&E's distribution facilities. PG&E has requested certain waivers.

PG&E states that copies of this filing have been served upon Port, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: August 18, 2003.

6. PacifiCorp

[Docket No. ER03–1121–000]

Take notice that on July 28, 2003, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a Notice of Cancellation of PacifiCorp's Rate Schedule No. 254 with Puget Sound Power & Light Company effective October 31, 2003.

PacifiCorp states that copies of this filing were supplied to Puget Sound Power & Light Company, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: August 18, 2003.

7. American Electric Power Service Corporation

[Docket No. ER03–1122–000]

Take notice that on July 28, 2003, American Electric Power Service Corporation (AEPSC), as agent for AEP Texas Central Company (Texas Central), submitted for filing the South Texas Project Interconnection Agreement (the Interconnection Agreement) between STP Nuclear Operating Company and several owners of the interconnected transmission systems among which Texas Central is included. AEPSC states that the Interconnection Agreement provides for the continued interconnection of two existing nuclear powered generating units near Wadsworth, Texas.

AEPSC seeks an effective date of August 15, 2002 for the Interconnection Agreement and waiver of the Commission's notice of filing requirement because there are no related rates or charges.

AEPSC states it has served copies of the filing on STP Nuclear Operating Company, CenterPoint Energy Houston Electric LLC, Austin Energy, City Public Service of San Antonio and the Public Utility Commission of Texas.

Comment Date: August 18, 2003.

8. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–1123–000]

Take notice that on July 28, 2003, Deseret Generation & Transmission Co-operative, Inc., (Deseret) tendered for filing with the Commission certain amendments to its market-based rate authority under Deseret's FERC Electric Tariff, Volume No. 3. Deseret seeks authority to add a provision to its existing market-based rate tariff that expressly permits it to reassign transmission capacity to third parties, to the extent it is not already permitted to do so. Deseret also seeks to eliminate the forms of service agreement attached to its tariff, as such forms are no longer required, given the Commission's elimination of the filing requirement for market-based agreements under Order No. 2001. Deseret request an effective date of July 31, 2003.

Comment Date: August 18, 2003.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–1124–000]

Take notice that on July 29, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing two interim interconnection service agreements between PJM and PSEG Nuclear, LLC, and between PJM and MM Hackensack Energy, L.L.C., and a Notice of Cancellation for a certain interim interconnection service agreement that has been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties for the agreements. PJM also states that copies of this filing were served upon PSEG Nuclear, LLC, MM Hackensack Energy, L.L.C. and the state regulatory commissions within the PJM region.

Comment Date: August 19, 2003.

10. PJM Interconnection, L.L.C.

[Docket No. ER03–1125–000]

Take notice that on July 29, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an amended interconnection service agreement and an amended construction service agreement among PJM, Waymart Wind Farm L.P., and PPL Electric Utilities Corporation.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 14, 2003 effective date for the agreements. PJM also states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 19, 2003.

11. Morgan Stanley Capital Group Inc.

[Docket No. ER03–1126–000]

Take notice that on July 29, 2003, Morgan Stanley Capital Group Inc. (MSCG), tendered for filing its Rate Schedule FERC No. 16. MSCG has requested that the Commission accept the Rate Schedule FERC No. 16 effective July 30, 2003.

MSCG states that a copy of the filing was served upon MSCG's jurisdictional customer, Deseret Generation & Transmission Co-operative.

Comment Date: August 12, 2003.

12. ISO New England Inc.

[Docket No. OA97–237–000]

Take notice that on July 24, 2003, ISO New England Inc. (the ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Market Report for the Third and Fourth Quarters (November 2002—February 2003).

Comment Date: August 25, 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. 03–20346 Filed 8–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF03–2011–000, et al.]

United States Department of Energy, et al.; Electric Rate and Corporate Filings

August 4, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. U.S. Department of Energy; Bonneville Power Administration

[Docket No. EF03–2011–000]

Take notice that on July 29, 2003, the Bonneville Power Administration (BPA) tendered for filing a proposed Safety-Net Cost Recovery Adjustment Clause (SN CRAC) under the 2002 General Rate Schedule Provisions (GRSPs) pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C.839e(a)(2). BPA seeks interim approval of its proposed rates effective September 30, 2003, pursuant to Commission Regulation 18 CFR 300.20. Pursuant to Commission Regulation 18 CFR 300.21, BPA seeks interim approval and final confirmation of the proposed SN CRAC adjustment effective October 1, 2003, through September 30, 2006.

Comment Date: September 3, 2003.

2. Sithe New England Holdings, LLC v. ISO New England Inc.

[Docket No. EL02–128–002]

Take notice that on August 1, 2003, ISO New England Inc. (ISO) tendered for filing its report of compliance to the Commission's directive in its Order on Rehearing, dated July 1, 2003, in Docket No. EL02–128–000, 104 FERC ¶ 61,006. ISO New England states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: September 2, 2003.

3. Oncor Electric Delivery Company

[Docket No. ER03–799–001]

Take notice that on July 30, 2003, Oncor Electric Delivery Company (Oncor) tendered for filing a Refund Report of Oncor Electric Delivery Company and designated Transmission Service Agreements as directed by the Commission's Order, 103 FERC ¶ 61,393. *Comment Date:* August 20, 2003.

4. New York Independent System Operator, Inc.

[Docket Nos. ER03–810–001]

Take notice that on July 30, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in connection with the Commission's June 30, 2003, Order in Docket No. ER03–810–000.

The NYISO states it has served a copy of this filing to all parties listed on the official service list in these proceedings. The NYISO also states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: August 20, 2003.

5. Northeast Utilities Service Company

[Docket No. ER03–907–001]

Take notice that on July 30, 2003, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Power and Electric Company and Holyoke Water Power Company (the NU Companies) submitted for filing a third amendment (Third Amendment) to the Settlement Agreement approved by the Commission in Northeast Utilities Service Company, 88 FERC ¶ 61,006 (the Settlement) to extend the rates, terms and conditions of the Settlement for an additional period of forty-five days commencing on July 30, 2003.

NUSCO states that it does not consider this filing to constitute a rate change within the meaning of 18 CFR 35.13 (2002). NUSCO requests that the Commission waive the requirements of 18 CFR 35.13.

NUSCO also states that a copy of this filing has been mailed to the service list and that no customers would be harmed by the Third Amendment.

Comment Date: August 20, 2003.

6. California Power & Light Company and Florida Power Corporation

[Docket No. ER03–962–001]

Take notice that on July 31, 2003, Florida Power Corporation, d/b/a Progress Energy Florida, Inc., filed Substitute First Revised Tariff Sheets Nos. 220 and 248 to correct the designations made in its original, June 17, 2003 filing in Docket No. ER03–962–000 consistent with Order No. 614.

Progress Energy Florida, Inc., states that copies of the filing were served on the official service list in the above referenced proceeding.

Comment Date: August 14, 2003.

7. Southern California Edison Company

[Docket No. ER03–1127–000]

Take notice that on July 30, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the City of Corona, California (Corona). SCE states that the purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will commence the engineering, design, procurement and preparation of specifications for the interconnection facilities and system upgrades necessary to provide Distribution Service from the California Independent System Operator Controlled Grid to a proposed new SCE-Corona 12 kV interconnection in the City of Corona. SCE also states that Corona is planning to construct distribution facilities from the proposed new SCE-Corona 12 kV interconnection to serve its Wholesale Distribution Loads in two new developments known as Corona Pointe and Crossroads Development.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Corona.

Comment Date: August 20, 2003.

8. American Electric Power Service Corporation

[Docket No. ER03–1128–000]

Take notice that on July 30, 2003, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Network Integration Transmission Service Agreement for Buckeye Power, Inc. (Buckeye). AEPSC states that this 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.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service on and after July 1, 2003.

AEPSC states that a copy of the filing was served upon Buckeye and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: August 20, 2003.

9. Central Hudson Gas & Electric Corporation

[Docket No. ER03–1129–000]

Take notice that on July 29, 2003, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of FERC Rate Schedule, Original Volume No.1 (Power Sales Tariff) effective January 1, 1997 in Docket No. ER97–890–000. Central Hudson states that the Power Sales Tariff sets forth the terms for the sale, by Central Hudson, of surplus capacity and/or energy to electric utilities at negotiated rates no higher than Central Hudson's cost of service.

Central Hudson states that the cancellation is the result of the sale of the majority of Central Hudson's electric generation on January 30, 2001 and November 7, 2001.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit the cancellation to become effective November 7, 2001.

Comment Date: August 20, 2003.

10. PJM Interconnection, L.L.C.

[Docket No. ER03–1130–000]

Take notice that on July 30, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, PSEG Fossil, LLC and Public Service Electric and Gas Company and a notice of cancellation for an interim ISA that has terminated.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 2, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 20, 2003.

11. PJM Interconnection, L.L.C.

[Docket No. ER03–1131–000]

Take notice that on July 30, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, Constellation Power Source Generation, Inc. and Baltimore Gas and Electric Company and a notice of cancellation of an interim ISA that has terminated.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 2, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 20, 2003.

12. PJM Interconnection, L.L.C.

[Docket No. ER03–1132–000]

Take notice that on July 30, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, PSEG Fossil, L.L.C. and Public Service Electric and Gas Company and a notice of cancellation of an interim ISA that has terminated.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 2, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 20, 2003.

13. PPL Montana, LLC

[Docket No. ER03–1133–000]

Take notice that, on July 30, 2003, PPL Montana, LLC (PPLM) tendered for filing PPLM's Rate Schedule 13. Rate Schedule 13 consists of the 1997 version of the Pacific Northwest Coordination Agreement (PNCA), as amended, and related agreements. PPLM request acceptance of this new rate schedule designation for the 1997 PNCA to be effective August 1, 2003.

PPLM states that a copy of the filing has been served upon all parties to the PNCA.

Comment Date: August 20, 2003.

14. PJM Interconnection, L.L.C.

[Docket No. ER03–1134–000]

Take notice that on July 30, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, PSEG Fossil, L.L.C. and Public Service Electric and Gas Company and a notice of cancellation for an interim ISA that has terminated.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 2, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 20, 2003.

15. Southwest Power Pool, Inc.

[Docket No. ER03–1135–000]

Take notice that on July 30, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Kansas Municipal Energy Agency (KMEA). SPP seeks an effective date of July 1, 2003 for the service agreement.

SPP states that copies of this filing were sent to KMEA.

Comment Date: August 20, 2003.

16. Southwest Power Pool, Inc.

[Docket No. ER03–1135–000]

Take notice that on July 30, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Kansas Municipal Energy Agency (KMEA). SPP seeks an effective date of July 1, 2003 for the service agreement.

SPP states that copies of this filing were sent to KMEA.

Comment Date: August 20, 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, 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. 03–20453 Filed 8–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–11–000]

Southwestern Gas Storage Technical Conference; Notice of Technical Conference and Agenda

August 4, 2003.

As announced in the Notice of Conference issued on June 19, 2003, staff from the Federal Energy Regulatory Commission (Commission) will convene a technical conference on August 26, 2003 at 9 a.m. at the Pointe Hilton Squaw Peak Resort, 7677 N. 16th St, Phoenix, AZ 85020, (602) 997–2626, to discuss issues related to natural gas storage development in the southwestern United States. By order issued June 4, 2003, in Docket Nos. CP02–420–000 *et al.*, the Commission directed that a technical conference be held to begin analysis of relevant market needs and regulatory options available to the Commission to assure the appropriate development of southwestern natural gas storage facilities and markets.[1] The conference Agenda is appended to this Notice.

In the June 19, 2003 Notice, potential presenters were asked to consider the following questions and present their responses at the conference, in order to more clearly focus the discussion:

What potential projects are currently under consideration by the industry for developing gas storage in the Southwest?

Should the Commission initiate an open-season approach for storage development proposals, in which all potential projects are filed at the same time?

What types of storage services are necessary or envisioned?

Who will contract for these services?

What type of storage facilities can physically be constructed (*i.e.* salt cavern, depleted oil/gas reservoirs, aquifer type, *etc.*)?

What environmental and cultural resources issues would affect the development of gas storage facilities in the Southwest?

What are the concerns of Native Americans in the development of natural gas storage facilities in the southwest?

Transcripts of the conference will be available from Ace-Federal Reporters, Inc. for a fee. The transcript will be available on the Commission's FERRIS system two weeks after the conference.

For additional information, please contact Elizabeth Anklam in the Office of Energy Projects at *elizabeth.anklam@ferc.gov*.

Magalie R. Salas,

Secretary.

Southwestern Gas Storage Conference Agenda; August 26, 2003

9 AM Opening Remarks—FERC
9:15 AM Panel I—Regulatory Perspectives—Panel Members
—FERC Certificate Process—Berne Mosley, Director, Division of Pipeline Certificates
—Certificate Policy Statement—John Myler, Attorney, Office of the General Counsel
—Rate Options—Robert Petrocelli, Office of Markets, Tariffs, and Rates
—Storage Engineering/Technical Review—Elizabeth Anklam, Petroleum Engineer, Division of Pipeline Certificates
—Environmental Review—Lonnie Lister, Chief, Environmental Branch 3, Office of Energy Projects
—The State Perspective—Marc Spitzer, Chairman Arizona Corporation Commission
10:45 AM—Question and Answer Session—15 minutes for questions from the audience
11 AM—Panel II—Industry Perspectives—Storage Panel Members
—Red Lake Gas Storage—Mark Cook, Vice President
—Copper Eagle Gas Storage—TBA
—Unocal Midstream and Trade (Keystone Gas Storage Facility)—TBA
—EnCana Gas Storage (Wild Goose Storage Inc.)—Paul Amirault, Vice President, Marketing
—Desert Crossing Gas Storage and Transportation System—TBA
12:15 AM—Question and Answer Session—15 minutes for questions from the audience
12:30 PM—Break—Lunch
1:30 PM—Panel III—Industry Perspectives—Other Panel Members
—El Paso Natural Gas Company—TBA
—Southwest Gas Corporation—TBA
—Salt River Project Agricultural Improvement & Power District—TBA
—LECG Economics, Finance—James F. Wilson, Principal
—International Gas Consulting—Kenneth Beckman, President
2:45 PM—Question and Answer Session—15 minutes for questions from the audience
3 PM Panel IV—Federal, State and Tribal Lands Matters Panel Members
—Hualapai Nation—TBA
—BLM—TBA
—Arizona Department of Environmental Quality—TBA
4 PM Question and Answer Session—15 minutes for questions from the audience
4:15 PM—Closing Remarks

[FR Doc. 03–20452 Filed 8–8–03; 8:45 am]

BILLING CODE 6717–01–P

[1] For the purpose of this conference, the Southwest is generally defined as west Texas, New Mexico, Arizona, southern Nevada, and southern California.

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–2330]

NPCR, Inc. d/b/a Nextel Partners' Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau seeks comment on the NPCR, Inc. d/b/a Nextel Partners' (NEXTEL) petition. NEXTEL is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in those portions of NEXTEL licensed service area located in rural and non-rural areas in Alabama.

DATES: Comments are due on or before August 21, 2003. Reply comments are due on or before September 4, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Elizabeth Yockus, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released July 16, 2003. On April 4, 2003, NPCR, Inc. d/b/a Nextel Partners (NEXTEL), a commercial mobile radio service (CMRS) carrier, filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in designated rural and non-rural areas of its licensed service area in the state of Alabama. NEXTEL contends that the Alabama Public Service Commission (Alabama Commission) has provided an affirmative statement that it does not regulate CMRS carriers; NEXTEL satisfies all the statutory and regulatory

prerequisites for ETC designation; and designating NEXTEL as an ETC will serve the public interest.

The petitioner must provide copies of its petition to the Alabama Commission. The Commission will also send a copy of this Public Notice to the Alabama Commission by overnight express mail to ensure that the Alabama Commission is notified of the notice and comment period.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before August 21, 2003, and reply comments are due on or before September 4, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 Fed. Reg. 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to section 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–20323 Filed 8–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 96–45; DA 03–2469]

Updating Line Counts Used in Calculating High-Cost Support for Non-Rural Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) seeks additional comment on updating line counts in the Commission's forward-looking cost model for purposes of determining support for non-rural carriers following a Commission decision in the *Ninth Report and Order,* 64 FR 67416, December 1, 1999, remand proceeding.

DATES: Comments are due on or before September 2, 2003. Reply Comments are due on or before September 10, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Katie King or Thomas Buckley, Attorneys, Wireline Competition Bureau, Telecommunications Access Policy Division (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Public Notice, CC Docket No. 96–45, released July 24, 2003. On January 7, 2003, the Bureau released a Public Notice seeking comment on how line count and other discrete input values should be updated for purposes of determining non-rural high-cost support. Consistent with past precedent, the Bureau sought comment on using year-end 2001 line counts filed July 31, 2002, as input values for purposes of estimating average forward-looking costs and determining support for non-rural carriers during 2003. The Bureau also sought comment on using the same methodology that it has used in the past to update special access lines.

In this Public Notice, the Bureau seeks additional comment on issues raised by parties concerning special access line updates in response to the *2003 Line Counts Public Notice,* 68 FR 6744, February 10, 2003. The cost model uses simplifying assumptions to estimate the costs of serving high-capacity special access lines, for example by treating DS 3 lines as voice grade equivalents to calculate per-line costs. Some commenters contend that this methodology causes the model to overstate the total number of lines served by non-rural carriers and, therefore, to underestimate per-line costs. Commenters maintain that recent DS 3 special access line growth exacerbates these effects. In addition, some commenters argue that allocating special access lines reported in ARMIS to wire centers based on the *1999 Data Request* understates per-line costs in rural and high-cost areas by assigning too many special access lines to these areas.

Therefore, the Bureau seeks additional comment on updating special access lines in the model for purposes of determining non-rural high-cost support. The Bureau seeks comment on whether, in light of recent special access line growth trends, zeroing out special access lines in the cost model's calculations would be a reasonable approach to estimating costs using the current model platform. Alternatively, the Bureau seeks comment on other

proposals for estimating special line growth. In the event that the Bureau decides to update special access lines, consistent with its prior practice, the Bureau also seeks comment on whether it should continue to allocate these updated special access lines to wire centers based on the *1999 Data Request,* or whether it should use an alternative methodology.

The Bureau seeks comment on whether to update the cost model with year-end 2002 line count data filed July 31, 2003 for purposes of estimating average forward-looking costs and determining support for non-rural carriers following a Commission decision in the *Ninth Report and Order* remand proceeding. The Bureau notes that new line count data will be available shortly. Moreover, in light of the statutory deadline of October 16, 2003, for a Commission decision in the remand proceeding, it is unlikely that the new version of the forward-looking cost model with updated inputs will be utilized for purposes of calculating support until January 1, 2004.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: Comments are due on or before September 2, 2003, and reply comments are due on or before September 10, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to section 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

William Scher,

Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–20324 Filed 8–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 25. 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Anita Marie Fontenot (Melancon), and Dames Fontenot, both of Lafayette, Louisiana; Rachel Fontenot Wyble, Carencro, Louisiana; and Carl Winn Fontenot, Chad David Fontenot, Craig Dwaine Fontenot, David Joseph Fontenot, and Vickie Lynn Fontenot (Bergeron), all of Ville Platte, Louisiana; to acquire voting shares of Citizens Bancshares, Inc., Ville Platte. Louisiana, and thereby indirectly acquire voting shares of Citizens Bank, Ville Platte, Louisiana.

Board of Governors of the Federal Reserve System, August 5, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–20419 Filed 8–8–03; 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 website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309–4470:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to merge with Sarasota Bancorporation, Inc., Sarasota, Florida, and thereby indirectly acquire 100 percent of the voting shares of Sarasota Bank, Sarasota, Florida.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Quality Bankshares, Inc., Fingal, North Dakota; to merge with Page Bank Holding Company, Page, North Dakota, and thereby indirectly acquire Page State Bank, Page, North Dakota.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Rainier Pacific Financial Group, Inc., Fife, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Rainier Pacific Savings Bank, Fife, Washington.

Board of Governors of the Federal Reserve System, August 5, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–20420 Filed 8–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9 a.m. (EDT), August 18, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of minutes of July 24, 2003, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. New system report.
4. Review of investment policy.
5. Review of Ernst & Young semiannual financial report.

Parts Closed to the Public

6. Discussion of personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–20500 Filed 8–7–03; 12:06 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements in proposed consumer surveys designed to help the FTC examine: How consumers search for and choose mortgages; how consumers use and understand information about mortgages, including required disclosures; and whether more effective disclosures are feasible. To conduct the research, the FTC first seeks OMB clearance and additional public comment regarding this notice, which is the second of two notices required by the PRA for information collection requests of this nature.

DATES: Comments must be submitted on or before September 10, 2003.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to *MortgageDS@ftc.gov* as prescribed below, and to Records Management Center, ATTN: Desk Officer for the FTC, OMB, Room 10102 NEOB, fax: (202) 395–6566. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned ''Mortgage Disclosure Study—FTC File No. P025505.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Janis K. Pappalardo, Economist, Bureau of Economics, Federal Trade Commission, 601 New Jersey Avenue, NW., Room NJ–4136, Washington, DC 20580. Telephone: (202) 326–3380; e-mail *jpappalardo@ftc.gov.*

SUPPLEMENTARY INFORMATION: Recent deceptive lending cases at the FTC and elsewhere suggest that consumers who do not understand the terms of their mortgages can be subject to deception, that deception can occur even when consumers receive the disclosures required by the Truth-in-Lending Act, 15 U.S.C. 1601 *et seq.* (TILA), and that deception about mortgage terms can result in substantial consumer injury.

Despite a long history of mortgage disclosure requirements and many new legislative and regulatory proposals regarding disclosures, little empirical evidence exists to document the effect of current disclosures on consumer understanding of mortgage terms, consumer mortgage shopping behavior, or consumer mortgage choice.

The FTC proposes a research program designed to learn more about how consumers search for mortgages, what consumers understand or misunderstand about mortgage agreements, and how changes in the disclosure process might improve consumer understanding, consumer mortgage shopping, and consumers' ability to avoid deception. The research also may assist the targeting of the FTC's enforcement actions by identifying areas most prone to consumer misunderstanding and lender deception and may help refine disclosure remedies imposed on deceptive lenders.

On April 22, 2003, the FTC sought public comments on the information collection aspects of the proposed surveys. See 68 FR 19,825. The FTC received seven comments on the proposed information collection request.[1] None of the commenters opposed the proposed information collection, and most of them

[1] American Land Title Association (ALTA) (described as the national trade association of the title insurance industry); East Side Organizing Project (ESOP) (a community-based grassroots organization in Cleveland, Ohio); Mortgage Bankers Association of America (MBA) (a trade association representing all aspects of real estate finance); The National Consumer Law Center (NCLC) (a non-profit Massachusetts Corporation specializing in issues faced by low-income consumers); Organization for a New Eastside (O.N.E.) (a community group in Indianapolis, Indiana); Syracuse United Neighbors (SUN) (a grassroots community organization in Syracuse, New York); the Texas Association of Mortgage Brokers (TAMB) (a trade association of mortgage brokers in Texas).

enthusiastically endorsed the research. All three community organizations expressed concern about predatory lending, and commended the Commission on its research objectives. See ESOP Comment at 1; O.N.E. Comment at 1; SUN Comment at 1. See also TAMB Comment at 3 (''TAMB commends you for undertaking the study. It comes at a critical time.'').

Although some of the commenters suggested that particular concerns be addressed in the research, none expressed reservations about the general methodology. For example, MBA wrote: ''With regard to research design, MBA believes that the methodology summarized in the comments request is sound.'' MBA Comment at 2.

Specific suggestions about the research generally reflect a desire to broaden the scope of the information collection. The NCLC, for example, requested that the research ''. . . incorporate all educational and income levels of consumers, as well as a variety of languages spoken by American consumers. Moreover, the sample should include enough of each type of borrower so that the sample can be stratified and the researchers can look at and compare subsets of borrowers.'' NCLC Comment at 5. TAMB recommended that the study be expanded to include more individuals and then grouped into transactions involving mortgage bankers, mortgage brokers, large banks and credit unions. TAMB Comment at 2. TAMB also recommended in-depth interviews with mortgage originators. TAMB Comment at 3.

Commenters offered certain other survey refinements. For example, the NCLC recommended that research on current disclosures include study of TILA forms, Good Faith Estimates, and the HUD–1. NCLC Comment at 7. The NCLC also recommended that the research examine how consumers understand key disclosure terms, such as the annual percentage rate. NCLC Comment at 7. Moreover, the NCLC and ALTA believe it important to differentiate between refinancing transactions and purchase transactions. ALTA Comment at 1; NCLC Comment at 5.

Recommendations of the commenters will be incorporated into the study to the extent possible. To illustrate, FTC staff intends to examine closely how consumers use and understand key mortgage terms. However, given budget limitations, it will not be possible to extend the sample size and study scope as was otherwise recommended. For example, although staff intends to survey consumers of many different demographic characteristics, the study will not necessarily yield meaningful comparisons across all of the groups the commenters recommend. Moreover, a survey of mortgage originators is beyond the proposed study's scope and available resources.

Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to collect the information sought under the proposed consumer surveys.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *MortgageDS@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii).

1. Description of the Collection of Information and Proposed Use

The FTC proposes to conduct this study in two phases: (1) A qualitative research phase; and (2) a quantitative research phase. The qualitative research phase will include focus groups and in-depth interviews. The quantitative research will include copy tests of current and alternative disclosures. Results from the first phase will be used to refine the design of the second phase.

The project will begin with 2 focus groups. Each group will include 8–10 consumers who completed a mortgage transaction within the previous year. One group will be comprised of subprime borrowers. The second group will be comprised of prime borrowers. The purpose of the focus groups is to examine how well consumers understand mortgage terms, how consumers shop for mortgages, if consumers recognize features of a mortgage offer that may significantly increase the cost of the loan, and whether consumers use and understand required disclosures. Subprime and prime borrowers will be examined separately to examine possible differences between these groups of consumers.

The focus group research will be followed by a series of approximately 36 individual, in-depth interviews with a different group of borrowers. Respondents will have completed a mortgage transaction within the previous two months and will be asked to bring their loan documents to the interview. The purpose of the interviews is to gain in-depth knowledge of the extent to which consumers use, search for, and understand mortgage information—including information about their own recent loans.

The last phase of the study will consist of copy test interviews of 800 consumers who entered into a mortgage transaction within the previous year. If possible, approximately half of the respondents will be subprime borrowers and half will be prime borrowers. The purpose of the copy tests will be to examine whether alternative disclosures can improve consumer understanding of mortgage terms and help to reduce potential deception about mortgage offers. The findings from the focus groups and interviews will be used in developing the alternative disclosures used in the copy tests.

All information will be collected on a voluntary basis and consumers will receive usual and customary compensation for their participation. For the qualitative research the FTC has contracted with a consumer research firm to locate eligible borrowers, recruit respondents, moderate the focus groups, conduct the interviews, and write a report of the findings. For the quantitative research the FTC has also contracted with a consumer research firm to locate eligible borrowers and recruit respondents as well as to conduct the copy tests and write a brief methodological report. The results will assist the FTC in determining how required disclosures and other information affects consumers' ability to understand the cost and features of mortgages. This understanding will further the FTC's mission of protecting consumers and competition in this important market.

2. Estimated Hours Burden

Qualitative Research

The contractor will recruit 12 consumers for each focus group, with the expectation that each group will be comprised of 8–10 participants. Participation by each focus group will require approximately two hours. Thus, the focus group research will impose a burden of up to 40 hours (2 groups × 10 participants per group × 2 hours per participant). Approximately 36 one-hour long, in-depth interviews will also be conducted. If all respondents are single decision makers, this would total 36 hours. However, some of the interviews may include couples.

Assuming that half of the interviews include couples (the upper bound offered by the contractor), the cumulative hours burden for the in-depth interviews would increase to 54 hours ((18 × 2 hours) + (18 × 1 hour)). Thus, the overall burden for the qualitative research will range from 76 hours to 94 hours.

Quantitative Research

Approximately 800 consumers who engaged in a mortgage transaction during the prior year will participate in the quantitative phase of the research. Each copy test interview will be roughly 20–30 minutes long. The estimated hours burden for the quantitative research ranges from 267 hours (800 respondents × ⅓ hour per respondent) to 400 hours (800 respondents × ½ hour per respondent).

Total

The total estimated hours burden for both phases of the study ranges from 343 hours (76 hours + 267 hours) to 494 hours (94 hours + 400 hours).

3. Estimated Cost Burden

Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents. Participants will be compensated financially for their participation, as recommended and budgeted for by the contractor.[2]

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–20373 Filed 8–8–03; 8:45 am]

BILLING CODE 6750–01–P

[2] The contractor has budgeted for incentives to compensate recent mortgage customers for their participation in the study. Individual focus group participants will each receive $75. Individuals who participate in the in-depth interviews will receive $100, and couples who complete the in-depth interviews will receive $150. Participants in the quantitative phase of the study will receive a modest honorarium as budgeted for by the contractor.

FEDERAL TRADE COMMISSION

[File No. 021 0115]

Iowa Movers and Warehousemen's Association; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 1, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Dana Abrahamsen, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2906.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 1, 2003), on the World Wide Web, at ''*http://www.ftc.gov/os/2003/08/index.htm*.'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with Iowa Movers and Warehousemen's Association (''IMWA'' or ''Respondent''). The Agreement is for settlement purposes only and does not constitute an admission by IMWA that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Commission's Complaint

The proposed Complaint alleges that Respondent Iowa Movers and Warehousemen's Association, a corporation, has violated and is now violating Section 5 of the Federal Trade Commission Act. Specifically, the proposed Complaint alleges that Respondent has agreed to engage, and has engaged, in a combination and conspiracy, an agreement, concerted action or unfair and unlawful acts, policies and practices, the purpose or effect of which is to unlawfully hinder, restrain, restrict, suppress or eliminate competition among household goods movers in the household goods moving industry.

Respondent is an association organized for and serving its members, which are approximately 70 household goods movers that conduct business within the State of Iowa. In 2002 IMWA became a division of the Iowa Motor Truck Association, but it retains its own identity. One of the primary functions of IMWA is preparing, and filing with the Iowa Department of Transportation's Office of Motor Carrier Services, tariffs and supplements on behalf of its members. These tariffs and supplements contain rates and charges for the intrastate and local transportation of household goods and for related services.

The proposed Complaint alleges that Respondent is engaged in initiating, preparing, developing, disseminating, and taking other actions to establish and maintain collective rates, which have the purpose or effect of fixing, establishing or stabilizing rates for the transportation of household goods in the State of Iowa. The Respondent files uniform rates and the tariffs contain rules that limit the extent to which movers can discount from those rates when charging consumers for moving services.

The proposed Complaint further alleges that Respondent organizes and conducts meetings that provide a forum for discussion or agreement between competing carriers concerning or affecting rates and charges for the intrastate transportation of household goods.

The proposed Complaint further alleges that Respondent's conduct is anticompetitive because it has the effect of raising, fixing, and stabilizing the prices of household goods moves. The acts of Respondent also have the effect of depriving consumers of the benefits of competition.

II. Terms of the Proposed Consent Order

The proposed Order would provide relief for the alleged anticompetitive effects of the conduct principally by means of a cease and desist order barring Respondent from continuing its practice of filing tariffs containing collective intrastate rates.

Paragraph II of the proposed Order bars Respondent from filing a tariff that contains collective intrastate rates. This provision will terminate Respondent's current practice of filing tariffs that contain intrastate rates that are the product of an agreement among movers in the State of Iowa. This paragraph also prohibits Respondent from engaging in activities such as exchanges of information that would facilitate member movers in agreeing on the rates contained in their intrastate tariffs. For example, the order bars Respondent from providing to other carriers certain non-public information.[1] It also bars Respondent from maintaining a tariff committee or agreeing with movers to institute any automatic intrastate rate increases.

Paragraph III of the proposed Order requires Respondent to cancel all tariffs that it has filed that contain intrastate collective rates. This provision will ensure that the collective intrastate rates now on file in the State of Iowa will no longer be in force, allowing for competitive rates in future individual mover tariffs. Paragraph III of the proposed Order also requires Respondent to cancel any provisions in its governing documents that permit it to engage in activities barred by the Order.

Paragraph IV of the proposed Order requires Respondent to send to its members a letter explaining the terms of the Order. This will make clear to members that they can no longer engage in collective rate-making activities.

Paragraphs V and VI of the proposed Order require Respondent to inform the Commission of any change in Respondent that could affect compliance with the Order and to file compliance reports with the Commission for a number of years. Paragraph VII of the proposed Order states that the Order will terminate in 20 years.

III. Opportunity for Modification of the Order

Respondent can seek to modify the proposed Order to permit it to engage in collective rate-making if it can demonstrate that the ''state action'' defense would apply to its conduct.[2] The state action doctrine dates back to the Supreme Court's 1943 opinion in *Parker* v. *Brown*, which held that, in light of the States' status as sovereigns, and given basic principles of federalism, Congress would not have intended the Sherman Act to apply to the activities of States themselves.[3] The defense also has been interpreted in limited circumstances to shield from antitrust scrutiny private firms' activities that are conducted pursuant to state authority. States may not, however, simply authorize private parties to violate the antitrust laws.[4] Instead, a State must substitute its own control for that of the market.

Thus, the state action defense would be available to Respondent only if it could demonstrate that its conduct satisfied the strict two-pronged standard the Supreme Court set out in *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.:* ''the challenged restraint must be 'one clearly articulated and affirmatively expressed as state policy''' and ''the policy must be 'actively supervised' by the state itself.''[5]

Under the first prong of *Midcal*'s two-part test, Respondent would be required to show that the State of Iowa had ''clearly articulated and affirmatively expressed as state policy'' the desire to replace competition with a regulatory scheme. With regard to this prong, it appears that under Iowa law tariffs must be ''just, reasonable, and nondiscriminating.''[6] Respondent would meet its burden only if it could show that this or some other provision of Iowa law constitutes a clear expression of state policy to displace competition and allow for collective rate-making among competitors.

Under the second prong of the *Midcal* test, Respondent would be required to demonstrate ''active supervision'' by state officials. The Supreme Court has made clear that the active supervision standard is a rigorous one. It is not enough that the State grants general authority for certain business conduct or that it approves private agreements with little review. As the Court held in *Midcal*, ''The national policy in favor of competition cannot be thwarted by casting such a gauzy cloak of state involvement over what is essentially a private price-fixing arrangement.''[7] Rather, active supervision is designed to ensure that a private party's anticompetitive action is shielded from antitrust liability only when ''the State has effectively made [the challenged] conduct its own.''[8]

In order for state supervision to be adequate for state action purposes, state officials must engage in a ''pointed re-examination'' of the private conduct.[9] In this regard, the State must ''*have and exercise* ultimate authority'' over the challenged anticompetitive conduct.[10] To do so, state officials must exercise ''sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties.''[11] One asserting the state action defense must demonstrate that the state agency has ascertained the relevant

[1] A State statute requires that carriers make their tariffs available to the public. Iowa Code section 325D.13.

[2] 16 CFR 2.51. Because the State of Iowa recently enacted legislation expanding the state's authority to review tariff filings, Respondent may seek to modify the Order in this instance. (Senate File 97, signed into law on March 28, 2003.) We note that a change in the statute alone is insufficient to assure active state supervision. As explained below, actual supervision, rather than mere statutory authority to supervise, is required. We discuss the state action defense below in some detail. *See also Indiana Household Movers and Warehousemen, Inc.*, File No. 021–0115 (Mar. 18, 2003) (proposed consent order) available at <*http://www.ftc.gov/os/2003/03/indianahouseholdmoversanalysis.pdf*>.

[3] 317 U.S. 341 (1943).

[4] *Parker* v. *Brown,* 317 U.S. at 351 (''[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or declaring that their action is lawful.'').

[5] 445 U.S. 97, 105 (1980) (''*Midcal*'') (quoting *City of Lafayette* v. *Louisiana Power & Light*, 435 U.S. 389, 410 (1978)). The ''restraint'' in this instance is the collective rate-setting. This articulation of the state action doctrine was reaffirmed by the Supreme Court in *FTC* v. *Ticor Title Insurance Co. (''Ticor''),* 504 U.S. 621, 633 (1992), where the Court noted that the gravity of the antitrust violation of price fixing requires exceptionally clear evidence of the State's decision to supplant competition.

[6] Iowa Code section 325A.7. In addition, an Iowa administrative rule specifically allows carriers of household goods to file their tariffs through an agent or another motor carrier, suggesting administrative approval of collective rate filings. Iowa Administrative Code 761–524.15(325A).

[7] *Midcal*, 445 U.S. at 105–06.

[8] *Patrick* v. *Burget*, 486 U.S. 94, 106 (1988).

[9] *Midcal,* 445 U.S. at 106. *Accord, Ticor,* 504 U.S. at 634–35; *Patrick* v. *Burget*, 486 U.S. at 100–01.

[10] *Patrick* v. *Burget,* 486 U.S. at 101 (emphases added).

[11] *Ticor,* 504 U.S. at 634–35.

facts, examined the substantive merits of the private action, assessed whether that private action comports with the underlying statutory criteria established by the state legislature, and squarely ruled on the merits of the private action in a way sufficient to establish the challenged conduct as a product of deliberate state intervention rather than private choice.

IV. General Characteristics of Active Supervision

At its core, the active supervision requirement serves to identify those responsible for public policy decisions. The clear articulation requirement ensures that, if a State is to displace national competition norms, it must replace them with specific state regulatory standards; a State may not simply authorize private parties to disregard federal laws,[12] but must genuinely substitute an alternative state policy. The active supervision requirement, in turn, ensures that responsibility for the ultimate conduct can properly be laid on the State itself, and not merely on the private actors. As the Court explained in *Ticor*:

> States must accept political responsibility for actions they intend to undertake * * * Federalism serves to assign political responsibility, not to obscure it * * * For States which do choose to displace the free market with regulation, our insistence on real compliance with both parts of the *Midcal* test will serve to make clear that the State is responsible for the price fixing it has sanctioned and undertaken to control.[13]

Through the active supervision requirement, the Court furthers the fundamental principle of accountability that underlies federalism by ensuring that, if allowing anticompetitive conduct proves to be unpopular with a State's citizens, the state legislators will not be ''insulated from the electoral ramifications of their decisions.''[14]

In short, clear articulation requires that a State enunciate an affirmative intent to displace competition and to replace it with a stated criterion. Active supervision requires the State to examine individual private conduct, pursuant to that regulatory regime, to ensure that it comports with that stated criterion. Only then can the underlying conduct accurately be deemed that of the State itself, and political responsibility for the conduct fairly be placed with the State.

Accordingly, under the Supreme Court's precedents, to provide meaningful active supervision, a State must (1) obtain sufficient information to determine the actual character of the private conduct at issue, (2) measure that conduct against the legislature's stated policy criteria, and (3) come to a clear decision that the private conduct satisfies those criteria, so as to make the final decision that of the State itself.

V. Standard for Active Supervision

There is no single procedural or substantive standard that the Supreme Court has held a State must adopt in order to meet the active supervision standard. Satisfying the Supreme Court's general standard for active supervision, described above, is and will remain the ultimate test for that element of the state action defense.

Nevertheless, in light of the foregoing principles, the Commission in this Analysis identifies the specific elements of an active supervision regime that it will consider in determining whether the active supervision prong of state action is met in future cases (as well as in any future action brought by Respondent to modify the terms of this proposed Order). They are three: (1) The development of an adequate factual record, including notice and opportunity to be heard; (2) a written decision on the merits; and (3) a specific assessment—both qualitative and quantitative—of how the private action comports with the substantive standards established by the state legislature. All three elements further the central purpose of the active supervision prong by ensuring that responsibility for the private conduct is fairly attributed to the State. Each will be discussed below.

A. Development of an Adequate Factual Record, Including Notice and Opportunity to Be Heard

To meet the test for active state supervision, in this case Respondent would need to show that the State had in place an administrative body charged with the necessary review of filed tariffs and capable of developing an adequate factual record to do so.[15] In *Ticor*, the Court quoted language from earlier lower court cases setting out a list of organizational and procedural characteristics relevant as the ''beginning point'' of an effective state program:

> [T]he state's program is in place, is staffed and funded, grants to the state officials ample power and the duty to regulate pursuant to declared standards of state policy, is enforceable in the state's courts, and demonstrates some basic level of activity directed towards seeing that the private actors carry out the state's policy and not simply their own policy * * *[16]

Moreover, that body would need to be capable of compiling, and actually compile, an adequate factual record to assess the nature and impact of the private conduct in question. The precise factual record that would be required would depend on the substantive norm that the State has provided; the critical question is whether the record has sufficient facts for the reviewing body sensibly to determine that the State's substantive regulatory requirements have been achieved. In the typical case in which the State has articulated a criterion of consumer impact, obtaining reliable, timely, and complete economic data would be central to the regulatory board's ability to determine if the State's chosen criterion has been satisfied.[17] Timeliness in particular is an ongoing concern; if the private conduct is to remain in place for an extended period of time, then periodic state reviews of that private conduct using current economic data are important to ensure that the restraint remains that of the State, and not of the private actors.

Additionally, in assembling an adequate factual record, the procedural value of notice and opportunity to comment is well established. These procedural elements, which have evolved in various contexts through common law, through state and federal constitutional law, and through Administrative Procedure Act rulemakings,[18] are powerful engines for ensuring that relevant facts—especially those facts that might tend to contradict the proponent's contentions—are brought to the state decision-maker's attention.

B. A Written Decision

A second important element the Commission will look to in determining whether there has been active supervision is whether the state board renders its decision in writing. Though not essential, the existence of a written decision is normally the clearest indication that the board (1) genuinely has assessed whether the private conduct satisfies the legislature's stated

[12] *Parker* , 317 U.S. at 351.

[13] 504 U.S. at 636.

[14] *See New York* v. *United States,* 505 U.S. 144, 168–69 (1992).

[15] At the time of any request for a modification, Respondent will be required to produce evidence of what the state reviewing agency is likely to do in response to collective rate-making. We recognize that this involves some prediction and uncertainty, particularly when the Respondent requests an order modification on the basis of a state review program that might be authorized but not yet operating, as the Respondent will still be under order. In such cases it may be appropriate for the Respondent to show what the state program is designed, directed, or organized to do. If a particular state agency is already conducting reviews in some related area, evidence of its approach to these tasks will be particularly relevant.

[16] *Ticor*, 504 U.S. at 637 (citations omitted).

[17] As the *Ticor* Court held, ''state officials [must] have undertaken the necessary steps to determine the specifics of the price-fixing or ratesetting scheme.'' *Id.* at 638.

[18] The Administrative Procedure Act defines a rule, in part, as ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.'' 5 U.S.C. 551(4). Actions ''concerned with the approval of ''tariffs'' or rate schedules filed by public utilities and common carriers'' are typical examples of rulemaking proceedings. E. Gellhorn & R. Levin, Administrative Law & Process 300 (1997).

standards and (2) has directly taken responsibility for that determination. Through a written decision, whether rejecting or (the more critical context) approving particular private conduct that would otherwise violate the federal antitrust laws, the state board would provide analysis and reasoning, and supporting evidence, that the private conduct furthers the legislature's objectives.[19]

C. Qualitative and Quantitative Compliance with State Policy Objectives

In determining active supervision, the substance of the State's decision is critical. Its fundamental purpose must be to determine that the private conduct meets the state legislature's stated criteria. Federal antitrust law does not seek to impose federal substantive standards on state decision-making, but it does require that the States—in displacing federal law—meet their own stated standards. As the *Ticor* Court explained:

Our decisions make clear that the purpose of the active supervision inquiry is not to determine whether the State has met some normative standard, such as efficiency, in its regulatory practices. Its purpose is to determine whether the State has exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties. Much as in causation inquiries, the analysis asks whether the State has played a substantial role in determining the specifics of the economic policy. The question is not how well state regulation works but whether the anticompetitive scheme is the State's own.[20]

Thus, a decision by a state board that assesses both qualitatively and quantitatively whether the ''details of the rates or prices'' satisfy the state criteria ensures that it is the State, and not the private parties, that determines the substantive policy. There should be evidence of the steps the State took in analyzing the rates filed and the criteria it used in evaluating those rates. There should also be evidence showing whether the State independently verified the accuracy of financial data submitted and whether it relied on accurate and representative samples of data. There should be evidence that the State has a thorough understanding of the consequences of the private parties' proposed action. Tariffs, for instance, can be complex, and there should be evidence that the State not only has analyzed the actual rates charged but also has analyzed the complex rules that may directly or indirectly impact the rates contained in the tariff.

If the State has chosen to include in its statute a requirement that the regulatory body evaluate the impact of particular conduct on ''competition,'' ''consumer welfare,'' or some similar criterion, then—to meet the standard for active supervision—there should be evidence that the State has closely and carefully examined the likely impact of the conduct on consumers. Because the central purpose of the federal antitrust laws is also to protect competition and consumer welfare,[21] conduct that would run counter to those federal laws should not be lightly assumed to be consistent with parallel state goals. Especially when, as here, the underlying private conduct alleged is price fixing—which, as the *Ticor* Court noted, is possibly the most ''pernicious'' antitrust offense [22]—a careful consideration of the specific monetary impact on consumers is critical to any assessment of an overall impact on consumer welfare. To the maximum extent practicable, that consideration should include an express quantitative assessment, based on reliable economic data, of the specific likely impact upon consumers.

It bears emphasizing that States need not choose to enact criteria such as promoting ''competition'' or ''consumer welfare''—the central end of federal antitrust law. A State could instead enact some other criterion. Then, the State's decision would need to assess whether that objective had been met.

On the other hand, if a State does not disavow (either expressly or through the promulgation of wholly contrary regulatory criteria) that consumer welfare is state regulatory policy, it must address consumer welfare in its regulatory analysis. In claiming the state action defense, a respondent would need to demonstrate that the state board, in evaluating arguably anticompetitive conduct, had carefully considered and expressly quantified the likely impact of that conduct on consumers as a central element of deciding whether to approve that conduct.[23]

In the present case, Iowa has chosen to give consideration to, among other state interests, the interests of consumers. A state statute prohibits movers from charging ''more for the transportation of persons or property than a fair and just rate or charge.'' [24] Thus, to establish active supervision, Respondent would be obligated to show that the State, prior to approving the rates at issue, performed an analysis and quantification of whether the rates to consumers would be higher than a ''fair and just rate.''

VI. Opportunity for Public Comment

The standards of active supervision remain those laid out by the Supreme Court in Midcal and its progeny. Those standards have been explained in detail above to further illustrate how they would apply should Respondent seek to modify this proposed Order. Applying these standards, the Commission believes, will further the principles of federalism and accountability enunciated by the Supreme Court, will help clarify for States and private parties the reach of federal antitrust law, and will ultimately redound to the benefit of consumers.

The proposed Order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreement and comments received, and will decide whether it should withdraw from the Agreement or make final the Order contained in the Agreement.

By accepting the proposed Order subject to final approval, the Commission anticipates that the competitive issues described in the proposed Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the proposed Order. It is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–20370 Filed 8–8–03; 8:45 am]

BILLING CODE 6750–01–P

[19] A record preserved by other means, such as audio or video recording technology, might also suffice, provided that it demonstrated that the board had (1) genuinely assessed the private conduct and (2) taken direct responsibility. Such an audio or video recording, however, will be an adequate substitute for a written opinion only when it provides a sufficiently transparent and decipherable view of the decision-making proceeding to facilitate meaningful public review and comment.

[20] *Ticor,* 504 U.S. at 634–35.

[21] Indeed, consideration of consumer impact is at the heart of ''[a] national policy'' that preserves ''the free market and * * * a system of free enterprise without price fixing or cartels.'' *Id.* at 632.

[22] *Id.* at 639 (''No antitrust offense is more pernicious than price fixing.'').

[23] This requirement is based on the principle that the national policy favoring competition ''is an essential part of the economic and legal system within which the separate States administer their own laws.'' *Id.* at 632.

[24] Iowa Code section 325D.13.

FEDERAL TRADE COMMISSION

[File No. 021 0115]

Minnesota Transport Services Association; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 1, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dana Abrahamsen, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2906.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 1, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/08/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with Minnesota Transport Services Association (''MTSA'' or ''Respondent''). The Agreement is for settlement purposes only and does not constitute an admission by MTSA that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Commission's Complaint

The proposed Complaint alleges that Respondent Minnesota Transport Services Association, a corporation, has violated and is now violating Section 5 of the Federal Trade Commission Act. Specifically, the proposed Complaint alleges that Respondent has agreed to engage, and has engaged, in a combination and conspiracy, an agreement, concerted action or unfair and unlawful acts, policies and practices, the purpose or effect of which is to unlawfully hinder, restrain, restrict, suppress or eliminate competition among household goods movers in the household goods moving industry.

Respondent is an association organized for and serving its members, which are approximately 89 household goods movers that conduct business within the State of Minnesota. One of the primary functions of Respondent is preparing, and filing with the Minnesota Department of Transportation, tariffs and supplements on behalf of its members. These tariffs and supplements contain rates and charges for the intrastate and local transportation of household goods and for related services.

The proposed Complaint alleges that Respondent is engaged in initiating, preparing, developing, disseminating, and taking other actions to establish and maintain collective rates, which have the purpose or effect of fixing, establishing or stabilizing rates for the transportation of household goods in the State of Minnesota.

The proposed Complaint further alleges that Respondent organizes and conducts meetings that provide a forum for discussion or agreement between competing carriers concerning or affecting rates and charges for the intrastate transportation of household goods.

The proposed Complaint further alleges that Respondent's conduct is anticompetitive because it has the effect of raising, fixing, and stabilizing the prices of household goods moves. The acts of Respondent also have the effect of depriving consumers of the benefits of competition.

II. Terms of the Proposed Consent Order

The proposed Order would provide relief for the alleged anticompetitive effects of the conduct principally by means of a cease and desist order barring Respondent from continuing its practice of filing tariffs containing collective intrastate rates.

Paragraph II of the proposed Order bars Respondent from filing a tariff that contains collective intrastate rates. This provision will terminate Respondent's current practice of filing tariffs that contain intrastate rates that are the product of an agreement among movers in the State of Minnesota. This paragraph also prohibits Respondent from engaging in activities such as exchanges of information that would facilitate member movers in agreeing on the rates contained in their intrastate tariffs. For example, the order bars Respondent from providing to other carriers certain non-public information.[1] It also bars Respondent from maintaining a tariff committee or agreeing with movers to institute any automatic intrastate rate increases.

Paragraph III of the proposed Order requires Respondent to cancel all tariffs that it has filed that contain intrastate collective rates. This provision will ensure that the collective intrastate rates now on file in the State of Minnesota will no longer be in force, allowing for competitive rates in future individual mover tariffs. Paragraph III of the proposed Order also requires Respondent to cancel any provisions in its governing documents that permit it to engage in activities barred by the Order.

Paragraph IV of the proposed Order requires Respondent to send to its members a letter explaining the terms of the Order. This will make clear to members that they can no longer engage in collective rate-making activities.

[1] Under a state statute, a carrier's tariff filing ''constitutes notice to the public'' of the contents of the tariff. Minn. Stat. Ann. § 221.161(Subd. 1).

Paragraphs V and VI of the proposed Order require Respondent to inform the Commission of any change in Respondent that could affect compliance with the Order and to file compliance reports with the Commission for a number of years. Paragraph VII of the proposed Order states that the Order will terminate in 20 years.

III. Opportunity for Modification of the Order

Respondent can seek to modify the proposed Order to permit it to engage in collective rate-making if it can demonstrate that the ''state action'' defense would apply to its conduct.[2] The state action doctrine dates back to the Supreme Court's 1943 opinion in *Parker* v. *Brown,* which held that, in light of the States' status as sovereigns, and given basic principles of federalism, Congress would not have intended the Sherman Act to apply to the activities of States themselves.[3] The defense also has been interpreted in limited circumstances to shield from antitrust scrutiny private firms' activities that are conducted pursuant to state authority. States may not, however, simply authorize private parties to violate the antitrust laws.[4] Instead, a State must substitute its own control for that of the market.

Thus, the state action defense would be available to Respondent only if it could demonstrate that its conduct satisfied the strict two-pronged standard the Supreme Court set out in *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.*: ''the challenged restraint must be 'one clearly articulated and affirmatively expressed as state policy' '' and ''the policy must be 'actively supervised' by the state itself.''[5]

Under the first prong of *Midcal's* two-part test, Respondent would be required to show that the State of Minnesota had ''clearly articulated and affirmatively expressed as state policy'' the desire to replace competition with a regulatory scheme. With regard to this prong, a Minnesota statute in effect until recently specifically addressed collective rates:

> In order to ensure nondiscriminatory rates and charges for shippers and receivers, the board shall establish a collective rate-making procedure which will ensure the publication and maintenance of just and reasonable rates and charges under uniform, reasonably related rate structures.[6]

On June 8, 2003 this statute was repealed.[7] With this statute repealed, Respondent would meet its burden only if it could show that some other provision of Minnesota law constitutes a clear expression of state policy to displace competition and allow for collective rate-making among competitors.

Respondent has asserted that the majority of its members were essentially compelled to file collective tariffs with the state because the state statute contemplated granting exemptions from filing collective rates only under limited circumstances.[8] The repeal of the Minnesota collective rate statute moots this issue in this case. However, even assuming a state statute compels private entities to file collective rates, this would not remove anticompetitive conduct from potential Federal antitrust liability. The Supreme Court has made clear that where a state statute compels a private party to engage in a *per se* violation of the Federal antitrust laws in order to comply with the state statute, the state statute will be pre-empted by the Federal Sherman Act unless the requirements of the state action doctrine have been met. *Rice* v. *Norman Williams Co.*, 458 U.S. 654, 661 (1982).[9] If a state statute compelled competitors to file collective rates, it would be mandating horizontal price fixing, which is the classic *per se* violation of the Sherman Act. If a state chooses to compel such facially anticompetitive private conduct, the private parties are free from Federal antitrust liability only when the requirements of the state action doctrine have been met, including active supervision by the state of the private collective rate-setting.[10]

Under the second prong of the *Midcal* test, Respondent would be required to demonstrate ''active supervision'' by state officials. The Supreme Court has made clear that the active supervision standard is a rigorous one. It is not enough that the State grants general authority for certain business conduct or that it approves private agreements with little review. As the Court held in *Midcal*, ''The national policy in favor of competition cannot be thwarted by casting such a gauzy cloak of state involvement over what is essentially a private price-fixing arrangement.''[11] Rather, active supervision is designed to ensure that a private party's anticompetitive action is shielded from antitrust liability only when ''the State has effectively made [the challenged] conduct its own.''[12]

In order for state supervision to be adequate for state action purposes, state officials must engage in a ''pointed re-examination'' of the private conduct.[13] In this regard, the State must ''*have* and *exercise* ultimate authority'' over the challenged anticompetitive conduct.[14] To do so, state officials must exercise ''sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties.''[15] One asserting the state action defense must demonstrate that the state agency has ascertained the relevant facts, examined the substantive merits of the private action, assessed whether that private action comports with the underlying statutory criteria established

[2] 16 CFR 2.51. Because of this possibility, and because the issues raised by this case frequently arise, it is appropriate to address the state action defense in some detail as we did in *Indiana Household Movers and Warehousemen, Inc.,* File No. 021–0115 (Mar. 18, 2003) (proposed consent order) available at *http://www.ftc.gov/os/2003/03/indianahouseholdmoversanalysis.pdf*

[3] 317 U.S. 341 (1943).

[4] *Parker* v. *Brown,* 317 U.S. at 351 (''[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or declaring that their action is lawful.'').

[5] 445 U.S. 97, 105 (1980) (''*Midcal*'') (*quoting City of Lafayette* v. *Louisiana Power & Light*, 435 U.S. 389, 410 (1978)). The ''restraint'' in this instance is the collective rate-setting. This articulation of the state action doctrine was reaffirmed by the Supreme Court in *FTC* v. *Ticor Title Insurance Co.* (''*Ticor*''), 504 U.S. 621, 633 (1992), where the Court noted that the gravity of the antitrust violation of price fixing requires exceptionally clear evidence of the State's decision to supplant competition.

[6] MINN. STAT. ANN. section 221.165.

[7] H.F. 1214, 83rd Leg. (MINN. 2003–2004).

[8] MINN. STAT. ANN. section 221.165; Minnesota Administrative Rule § 8900.1000 (Subpart 2) (exemption can be granted if the mover ''will suffer no hardship in publishing its own rates,'' the grant will ''not conflict with the legislative purpose to be accomplished by commissioner approval of collective ratemaking'' and ''the grant will be consistent with the public interest''). There is no evidence that the movers participating in the collective tariffs sought exemptions.

[9] A state statute may be ''condemned under the antitrust laws * * * if it mandates or authorizes conduct that necessarily constitutes a violation of the law in all cases, or if it places irresistible pressure on a private party to violate the antitrust laws in order to comply with the statute. Such condemnation will follow under section 1 of the Sherman Act when the conduct contemplated by the statute is in all cases a *per se* antitrust violation.'' *Rice*, 458 U.S. at 661.

[10] As the Supreme Court itself noted in *Rice* v. *Norman Williams Co.*, its earlier decision in *Midcal,* articulating the two prongs of the state action doctrine, overturned a statute that ''*required* members of the California wine industry to file fair trade contracts or price schedules with the State, and provided that if a wine producer had not set prices through a fair trade contract, wholesalers *must* post a resale price schedule for that producer's brands.'' 458 U.S. at 659 (emphasis in original). Thus, the statute at issue in *Midcal* ''facially conflicted with the Sherman Act because it *mandated* resale price maintenance, an activity that has long been regarded as a *per se* violation of the Sherman Act.'' *Id.* at 659–60 (emphasis in original).

[11] *Midcal*, 445 U.S. at 105–06.

[12] *Patrick* v. *Burget*, 486 U.S. 94, 106 (1988).

[13] *Midcal*, 445 U.S. at 106. *Accord, Ticor*, 504 U.S. at 634–35; *Patrick* v. *Burget*, 486 U.S. at 100–01.

[14] *Patrick* v. *Burget*, 486 U.S. at 101 (emphases added).

[15] *Ticor*, 504 U.S. at 634–35.

by the state legislature, and squarely ruled on the merits of the private action in a way sufficient to establish the challenged conduct as a product of deliberate state intervention rather than private choice.

IV. General Characteristics of Active Supervision

At its core, the active supervision requirement serves to identify those responsible for public policy decisions. The clear articulation requirement ensures that, if a State is to displace national competition norms, it must replace them with specific state regulatory standards; a State may not simply authorize private parties to disregard Federal laws,[16] but must genuinely substitute an alternative state policy. The active supervision requirement, in turn, ensures that responsibility for the ultimate conduct can properly be laid on the State itself, and not merely on the private actors. As the Court explained in *Ticor:*

> States must accept political responsibility for actions they intend to undertake. . . . Federalism serves to assign political responsibility, not to obscure it. . . . For States which do choose to displace the free market with regulation, our insistence on real compliance with both parts of the *Midcal* test will serve to make clear that the State is responsible for the price fixing it has sanctioned and undertaken to control.[17]

Through the active supervision requirement, the Court furthers the fundamental principle of accountability that underlies federalism by ensuring that, if allowing anticompetitive conduct proves to be unpopular with a State's citizens, the state legislators will not be ''insulated from the electoral ramifications of their decisions.'' [18]

In short, clear articulation requires that a State enunciate an affirmative intent to displace competition and to replace it with a stated criterion. Active supervision requires the State to examine individual private conduct, pursuant to that regulatory regime, to ensure that it comports with that stated criterion. Only then can the underlying conduct accurately be deemed that of the State itself, and political responsibility for the conduct fairly be placed with the State.

Accordingly, under the Supreme Court's precedents, to provide meaningful active supervision, a State must (1) obtain sufficient information to determine the actual character of the private conduct at issue, (2) measure that conduct against the legislature's stated policy criteria, and (3) come to a clear decision that the private conduct satisfies those criteria, so as to make the final decision that of the State itself.

V. Standard for Active Supervision

There is no single procedural or substantive standard that the Supreme Court has held a State must adopt in order to meet the active supervision standard. Satisfying the Supreme Court's general standard for active supervision, described above, is and will remain the ultimate test for that element of the state action defense.

Nevertheless, in light of the foregoing principles, the Commission in this Analysis identifies the specific elements of an active supervision regime that it will consider in determining whether the active supervision prong of state action is met in future cases (as well as in any future action brought by Respondent to modify the terms of this proposed Order). They are three: (1) The development of an adequate factual record, including notice and opportunity to be heard; (2) a written decision on the merits; and (3) a specific assessment—both qualitative and quantitative—of how the private action comports with the substantive standards established by the state legislature. All three elements further the central purpose of the active supervision prong by ensuring that responsibility for the private conduct is fairly attributed to the State. Each will be discussed below.

A. Development of an Adequate Factual Record, Including Notice and Opportunity To Be Heard

To meet the test for active state supervision, in this case Respondent would need to show that the State had in place an administrative body charged with the necessary review of filed tariffs and capable of developing an adequate factual record to do so.[19] In *Ticor*, the Court quoted language from earlier lower court cases setting out a list of organizational and procedural characteristics relevant as the ''beginning point'' of an effective state program:

> [T]he state's program is in place, is staffed and funded, grants to the state officials ample power and the duty to regulate pursuant to declared standards of state policy, is enforceable in the state's courts, and demonstrates some basic level of activity directed towards seeing that the private actors carry out the state's policy and not simply their own policy . * * *[20]

Moreover, that body would need to be capable of compiling, and actually compile, an adequate factual record to assess the nature and impact of the private conduct in question. The precise factual record that would be required would depend on the substantive norm that the State has provided; the critical question is whether the record has sufficient facts for the reviewing body sensibly to determine that the State's substantive regulatory requirements have been achieved. In the typical case in which the State has articulated a criterion of consumer impact, obtaining reliable, timely, and complete economic data would be central to the regulatory board's ability to determine if the State's chosen criterion has been satisfied.[21] Timeliness in particular is an ongoing concern; if the private conduct is to remain in place for an extended period of time, then periodic state reviews of that private conduct using current economic data are important to ensure that the restraint remains that of the State, and not of the private actors.

Additionally, in assembling an adequate factual record, the procedural value of notice and opportunity to comment is well established. These procedural elements, which have evolved in various contexts through common law, through State and Federal constitutional law, and through Administrative Procedure Act rulemakings,[22] are powerful engines for ensuring that relevant facts—especially those facts that might tend to contradict the proponent's contentions—are brought to the state decision-maker's attention.

[16] *Parker*, 317 U.S. at 351.

[17] 504 U.S. at 636.

[18] *See New York* v. *United States*, 505 U.S. 144, 168–69 (1992).

[19] At the time of any request for a modification, Respondent will be required to produce evidence of what the state reviewing agency is likely to do in response to collective rate-making. We recognize that this involves some prediction and uncertainty, particularly when the Respondent requests an order modification on the basis of a state review program that might be authorized but not yet operating, as the Respondent will still be under order. In such cases it may be appropriate for the Respondent to show what the state program is designed, directed, or organized to do. If a particular state agency is already conducting reviews in some related area, evidence of its approach to these tasks will be particularly relevant.

[20] *Ticor*, 504 U.S. at 637 (citations omitted).

[21] As the *Ticor* Court held, ''state officials [must] have undertaken the necessary steps to determine the specifics of the price-fixing or ratesetting scheme.'' *Id.* at 638.

[22] The Administrative Procedure Act defines a rule, in part, as ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.'' 5 U.S.C. 551(4). Actions ''concerned with the approval of 'tariffs' or rate schedules filed by public utilities and common carriers'' are typical examples of rulemaking proceedings. E. Gellhorn & R. Levin, Administrative Law & Process 300 (1997).

B. A Written Decision

A second important element the Commission will look to in determining whether there has been active supervision is whether the state board renders its decision in writing. Though not essential, the existence of a written decision is normally the clearest indication that the board (1) genuinely has assessed whether the private conduct satisfies the legislature's stated standards and (2) has directly taken responsibility for that determination. Through a written decision, whether rejecting or (the more critical context) approving particular private conduct that would otherwise violate the Federal antitrust laws, the state board would provide analysis and reasoning, and supporting evidence, that the private conduct furthers the legislature's objectives.[23]

C. Qualitative and Quantitative Compliance with State Policy Objectives

In determining active supervision, the substance of the State's decision is critical. Its fundamental purpose must be to determine that the private conduct meets the state legislature's stated criteria. Federal antitrust law does not seek to impose Federal substantive standards on state decision-making, but it does require that the States—in displacing Federal law—meet their own stated standards. As the *Ticor* Court explained:

> Our decisions make clear that the purpose of the active supervision inquiry is not to determine whether the State has met some normative standard, such as efficiency, in its regulatory practices. Its purpose is to determine whether the State has exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties. Much as in causation inquiries, the analysis asks whether the State has played a substantial role in determining the specifics of the economic policy. The question is not how well state regulation works but whether the anticompetitive scheme is the State's own.[24]

Thus, a decision by a state board that assesses both qualitatively and quantitatively whether the ''details of the rates or prices'' satisfy the state criteria ensures that it is the State, and not the private parties, that determines the substantive policy. There should be evidence of the steps the State took in analyzing the rates filed and the criteria it used in evaluating those rates. There should also be evidence showing whether the State independently verified the accuracy of financial data submitted and whether it relied on accurate and representative samples of data. There should be evidence that the State has a thorough understanding of the consequences of the private parties' proposed action. Tariffs, for instance, can be complex, and there should be evidence that the State not only has analyzed the actual rates charged but also has analyzed the complex rules that may directly or indirectly impact the rates contained in the tariff.

If the State has chosen to include in its statute a requirement that the regulatory body evaluate the impact of particular conduct on ''competition,'' ''consumer welfare,'' or some similar criterion, then—to meet the standard for active supervision—there should be evidence that the State has closely and carefully examined the likely impact of the conduct on consumers. Because the central purpose of the Federal antitrust laws is also to protect competition and consumer welfare,[25] conduct that would run counter to those Federal laws should not be lightly assumed to be consistent with parallel state goals. Especially when, as here, the underlying private conduct alleged is price fixing—which, as the *Ticor* Court noted, is possibly the most ''pernicious'' antitrust offense[26]—a careful consideration of the specific monetary impact on consumers is critical to any assessment of an overall impact on consumer welfare. To the maximum extent practicable, that consideration should include an express quantitative assessment, based on reliable economic data, of the specific likely impact upon consumers.

It bears emphasizing that States need not choose to enact criteria such as promoting ''competition'' or ''consumer welfare''—the central end of Federal antitrust law. A State could instead enact some other criterion. Then, the State's decision would need to assess whether that objective had been met.

On the other hand, if a State does not disavow (either expressly or through the promulgation of wholly contrary regulatory criteria) that consumer welfare is state regulatory policy, it must address consumer welfare in its regulatory analysis. In claiming the state action defense, a respondent would need to demonstrate that the state board, in evaluating arguably anticompetitive conduct, had carefully considered and expressly quantified the likely impact of that conduct on consumers as a central element of deciding whether to approve that conduct.[27]

In the present case, Minnesota has chosen to give consideration to, among other state interests, the interests of consumers. Statutes require that the rates not be ''unjust, unreasonable, unjustly discriminatory, unduly preferential or prejudicial''[28] and that they not be ''excessive.''[29] Thus, to establish active supervision, Respondent would be obligated to show that the State, prior to approving the rates at issue, performed an analysis and quantification of whether the rates to consumers are ''excessive.''

VI. Opportunity for Public Comment

The standards of active supervision remain those laid out by the Supreme Court in Midcal and its progeny. Those standards have been explained in detail above to further illustrate how they would apply should Respondent seek to modify this proposed Order. Applying these standards, the Commission believes, will further the principles of federalism and accountability enunciated by the Supreme Court, will help clarify for States and private parties the reach of Federal antitrust law, and will ultimately redound to the benefit of consumers.

The proposed Order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreement and comments received, and will decide whether it should withdraw from the Agreement or make final the Order contained in the Agreement.

By accepting the proposed Order subject to final approval, the Commission anticipates that the competitive issues described in the proposed Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the proposed Order. It is not intended to constitute an official interpretation of the Agreement and

[23] A record preserved by other means, such as audio or video recording technology, might also suffice, provided that it demonstrated that the board had (1) genuinely assessed the private conduct and (2) taken direct responsibility. Such an audio or video recording, however, will be an adequate substitute for a written opinion only when it provides a sufficiently transparent and decipherable view of the decision-making proceeding to facilitate meaningful public review and comment.

[24] *Ticor*, 504 U.S. at 634–35.

[25] Indeed, consideration of consumer impact is at the heart of ''[a] national policy'' that preserves ''the free market and * * * a system of free enterprise without price fixing or cartels.'' *Id.* at 632.

[26] *Id.* at 639 (''No antitrust offense is more pernicious than price fixing.'').

[27] This requirement is based on the principle that the national policy favoring competition ''is an essential part of the economic and legal system within which the separate States administer their own laws.'' *Id.* at 632.

[28] Minn. Stat. Ann. section 221.161(Subd. 1).

[29] Minn. Stat. Ann. section 221.161(Subd.2).

proposed Order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–20371 Filed 8–8–03; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Proposed Revisions to a Privacy Act System of Records

AGENCY: General Services Administration.

ACTION: Notice of proposed revision to an existing Privacy Act system of records.

SUMMARY: The General Services Administration (GSA) proposes to revise the system of records, Credentials, Passes, and Licenses (GSA/HRO–8). The purpose of the system is to assemble in one system information on passes and credentials for identification and security purposes. The system is being revised to cover new categories of individuals, consisting of Federal tenants and contractors, to provide greater security and control access to Federal buildings and systems. In addition, administrative enhancements to improve system effectiveness and operation include an upgrade in electronic capabilities through the use of Smart Card technology, and updates to agency forms, organizational responsibilities, and office addresses.

DATES: Interested persons may submit written comments on this proposal. The revision will become effective without further notice on September 10, 2003, unless comments received on or before that date require changes to the proposal.

ADDRESSES: Comments should be submitted to the GSA Privacy Act Officer (CI), Office of the Chief People Officer, General Services Administration, 1800 F Street, NW., Washington DC 20405.

FOR FURTHER INFORMATION CONTACT: The GSA Privacy Act Officer at the above address, or call 202–501–1452.

Dated: July 31, 2003.

Fred Alt,

Chief Information Officer, Office of the Chief People Officer.

GSA/HRO–8

SYSTEM NAME:

Credentials, Passes, and Licenses (GSA/HRO–8).

SYSTEM LOCATION:

This system of records is operated and maintained by the Office of the Chief Information Officer (CIO) for GSA's Services, Staff Offices, and regions, which are responsible for ensuring the integrity of the data in the system. System records are located in Central Office at 1800 F Street, NW., Washington DC, and in the regional offices listed in the *Appendix.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

GSA associates, Federal tenants, contractors, and other persons assigned responsibilities that require the issuance of credentials for identification and security purposes, including individuals participating in identification methods using the latest technologies, such as biometrics (*e.g.*, electronic fingerprinting).

CATEGORIES OF RECORDS IN THE SYSTEM:

Passes, licenses, and identification credentials, which may contain name, Social Security Number, photograph, office and home addresses and phone numbers, signature, identification serial number, next of kin name and phone number, medical information, and biometric identification information. The following GSA forms and associated databases will be used agency-wide:

a. GSA Form 277, Employee Identification and Authorization Credential (Revised 2003);

b. GSA Form 277U, Temporary Pass;

c. GSA Form 277V, Visitor Pass;

d. OF 7, Property Pass;

e. GSA Form 2941, Parking Application; and

f. Biometric information, such as fingerprints, collected electronically.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended.

PURPOSE:

To assemble in one system information pertaining to passes and credentials for identification and security purposes; to facilitate the issuance and control of cards, parking permits, building passes, licenses, and similar credentials; and to ensure only authorized access to secure areas and systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed as a routine use:

a. To the Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the General Services Administration becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To a member of Congress or a congressional staff member in response to an inquiry from that congressional office made at the request of the individual who is the subject of a record.

c. To another Federal agency or to a court when the government is party to a judicial proceeding before the court.

d. To a Federal agency, on request, in connection with the hiring and retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of a job, the letting of a contract, or the issuance of 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.

e. By the Office of Personnel Management in the production of summary descriptive statistics in support of the function for which the records are collected and maintained, or for related workforce studies.

f. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process.

g. To officials of the Merit Systems Protection Board, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

h. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee to whom the information pertains.

i. To the Office of Personnel Management in accordance with the agency's responsibility for evaluation of Federal personnel management.

j. To the extent that official personnel records in the custody of GSA are covered within the systems or records published by the Office of Personnel Management as Government-wide records, they will be considered a part of that government-wide system. Other official personnel records covered by notices published by GSA and considered to be separate systems of

records may be transferable to the Office of Personnel Management in accordance with official personnel programs and activities as a routine use.

k. To an expert, consultant, or a contractor of GSA to the extent necessary to further the performance of a Federal duty.

l. To medical personnel in the event of a medical emergency.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is collected electronically and stored in Smart Card chips on the individual's identification cards, and in associated automated data systems.

RETRIEVABILITY:

Name, SSN, and identification and badge serial numbers.

SAFEGUARDS:

When not in use by an authorized person, the records are stored in an electronic data system. Electronic records are protected by a password and may also have a personal identification number (PIN) as a second level of protection.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2) and authorized GSA records schedules.

SYSTEM MANAGERS AND ADDRESS:

Director, Office of Infrastructure Operations (IO), Office of the Chief Information Officer, General Services Administration, 1800 F Street, NW., Washington DC 20405. The IO operates and maintains the database containing system information for GSA Services, Staff Offices, and regions.

NOTIFICATION PROCEDURE:

Individuals will be able to access, review, and update their own personal information in the system. Individuals may determine whether the system contains their records by submitting a request to the System Manager or the appropriate regional Credentialing Office listed in the Appendix.

RECORD ACCESS PROCEDURES:

Individuals whose records are in the system will be provided access to their own information.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager or the appropriate Credentialing Office listed in the Appendix.

RECORD SOURCE CATEGORIES:

Information is provided by individuals being issued credentials and by the issuing officials.

Appendix: GSA Regional Credentialing Office Addresses:

New England Region (includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): General Services Administration, 10 Causeway Street, Boston, MA 02222.

Northeast and Caribbean Region (includes New Jersey, New York, Puerto Rico, and Virgin Islands): General Services Administration, 26 Federal Plaza, New York, NY 10278.

Mid-Atlantic Region (includes Delaware, Maryland, Pennsylvania, Virginia and West Virginia, (but excludes the National Capital Region): General Services Administration, The Strawbridge Building, 20 North Eighth Street, Philadelphia, PA 19107–3191.

Southeast Sunbelt Region (includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): General Services Administration, Summit Building, 401 West Peachtree Street, Atlanta, GA 30365–2550.

Great Lakes Region (includes Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin): General Services Administration, 230 South Dearborn Street, Chicago, IL 60604–1696.

The Heartland Region (includes Iowa, Kansas, Missouri, and Nebraska) General Services Administration: 1500 East Bannister Road, Kansas City, MO 64131–3088.

Greater Southwest Region (includes Arkansas, Louisiana, Oklahoma, New Mexico, and Texas), General Services Administration, 819 Taylor Street, Fort Worth, TX 76102.

Rocky Mountain Region (includes Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): General Services Administration, Denver Federal Center, Bldg 41, Lakewood, CO 80011.

Pacific Rim Region (includes Arizona, California, Hawaii, and Nevada) General Services Administration: 450 Golden Gate Avenue, San Francisco, CA 94102–3488.

Northwest/Arctic Region (includes Alaska, Idaho, Oregon, and Washington) General Services Administration: 400 15th Street, SW., Auburn, WA 98001–6599.

National Capital Region (includes the District of Columbia; the counties of Montgomery and Prince George's in Maryland; the city of Alexandria, Virginia; and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia): General Services Administration, 7th and D Streets, SW., Washington, DC 20407.

[FR Doc. 03–20357 Filed 8–8–03; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified at rate of 12⅛% for the quarter ended June 30, 2003. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any changes.

Dated: August 1, 2003.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 03–20348 Filed 8–8–03; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–105]

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: ATSDR Rapid Response Registry—New—The Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR plans to develop a registry of individuals exposed to a terrorist or other significant emergency event potentially affecting public health within the United States and its territories. The authority to establish and maintain this registry was given to ATSDR through the following federal laws: Public Health Service Act, 42 U.S.C. 319; the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA); Federal Response Plan; National Contingency Plan; and the Department of Homeland Security's Consolidated Emergency Operations Plan. ATSDR has consistently been identified as having the primary responsibility for the creation and maintenance of an event-related registry of affected individuals during the acute response phase of an emergency event.

ATSDR plans to develop and maintain a central registry, named the Rapid Response Registry (RRR), of individuals who were in the vicinity of a terrorist or other emergency event. The ATSDR RRR teams will begin identifying and enrolling victims and potentially exposed individuals within hours of an incident, in collaboration with state and local government agencies and private response organizations. RRR activities are intended to help document an individual's presence at or near a specific terrorist or other significant emergency event. This information will be used primarily to provide health officials with essential information necessary for both short- and long-term follow-up of victims and potentially exposed individuals. Contact information will be used to provide information to the registrants regarding their exposures, potential health impacts, available educational materials, and other pertinent news and updates. Follow-up contacts by health officials are anticipated to be for the purposes of assessing current and future medical needs and providing appropriate and timely medical interventions where possible. Subsequent health studies (not part of this activity) may be useful to identify potential long-term health outcomes in the exposed population; the contact information will enable these studies to be conducted.

A standardized one-page survey instrument will be used to collect contact information, demographics, and brief exposure and outcome data on all registrants. The same survey instrument will be used in both Phase I and Phase II data collection activities.

Phase I response entails immediate deployment of the RRR team to support local efforts to enroll victims and immediately-exposed individuals. Phase I RRR data collection teams will be deployed to all places where victims and the immediately-exposed population might be located (*e.g.*, on-site response facilities, emergency departments, hospitals, morgues, public shelters, churches).

Phase II response entails later deployment of an RRR team to conduct a census of the entire at-risk population. Phase II data collection methods will include house-to-house interviews, telephone interviews, on-line enrollment, media outreach, and professional tracing services. If the at-risk population or geographic area is reasonably small-scale, a systematic census will be conducted to enroll every exposed or potentially exposed person. If the at-risk population or geographic area is large-scale, then a representative sample of the at-risk population will be enrolled. A brief, optional health effects questionnaire also has been developed that will be made available to local health officials, if they wish to use it, to better characterize the types of health outcomes resulting from the emergency event. There are no costs to respondents.

Respondents	Number of respondent	Responses per respondent	Avg. burden per response (in hrs)	Total burden per year (in hrs)
People in proximity to an emergency event: 1-page contact form only	1,000	1	10/60	167
People in proximity to an emergency event: health effects questionnaire	200	1	20/60	67
Total				234

Dated: August 4, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–20350 Filed 8–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–106]

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 Anne O'Connor, 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: REACH 2010 Evaluation—Racial and Ethnic Approaches to Community Health, Phase II (0920–0502)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The REACH 2010 Demonstration Program is a part of the Department of Health and Human Services' response to the President's Race Initiative and to the Healthy People 2010 goal to eliminate disparities in the health status of racial and ethnic minorities. The purpose of REACH 2010 is to demonstrate that adequately funded community-based programs which are designed and led by the communities they serve can reduce health disparities in infant mortality, deficits in breast and cervical cancer screening and management, cardiovascular diseases, diabetes, HIV/AIDS, and deficits in childhood and adult immunizations. The communities served by REACH 2010 include: African American, American Indian, Hispanic American, Asian American, and Pacific Islander. Seventeen communities were funded in Phase I to construct Community Action Plans (CAP). In Phase II, 26 communities will receive funding to implement their CAP. This data collection is for the Phase II communities.

As part of the President's Race Initiative, it is imperative that REACH 2010 demonstrate success in reducing health disparities among racial and ethnic minority populations. Toward that end, it is of critical importance that CDC collect uniform survey data from each of the 26 communities funded for the Phase II REACH 2010 Demonstration Program. The same survey will be conducted in each community; it will contain questions that are standard public health performance measures for each health priority area. Surveys will be administered by either telephone or household interview. These surveys will be administered annually using a different sample from each community. There are no costs to respondents for participating in the data collection.

The total annualized burden hours for this project is 6500.

Respondents	Number of respondents	Number of responses/respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Adults ages 18 and older who live in communities participating in the REACH 2010 Program	26,000	1	15/60	6500
Total				6500

Dated: August 4, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–20351 Filed 8–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[60Day–03–107]

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. CDC is requesting an emergency clearance for this data collection with a week comment period. CDC is requesting OMB approval of this package seven days after the end of the public comment period.

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 seven days of this notice.

Proposed Project: Collection of Publication Assessment Information—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

This project will collect information from Internet users after they order or download a publication from the website of the Department of Health and Human Services/Centers for Disease Control and Prevention/National Center for Injury Prevention and Control. NCIPC produces a variety of publications about injury prevention for a range of audiences, from public health professionals to the general public. Publications include reports to Congress, fact books, brochures, research articles, tool kits, and books. Most of these publications are available to the general public, and the chief distribution method is through the NCIPC website, *http://www.cdc.gov/ncipc*. On the website, people can order print copies or view electronic copies of the publications.

It is critical for NCIPC to obtain feedback from users of their publications so it can better understand who uses them and how. This will help guide the development of future publications, revisions of current ones, as well as distribution of publications. As part of the effort to gain understanding about the audiences of NCIPC publications, we will collect information through a web-based form. NCIPC website users will have the opportunity to fill out the form after

ordering, downloading, or reading online publications through the website. The form contains questions about the demographic background of the users, how they found the website, how they plan to use the publication, their need for publications in other languages, the degree to which the publication offerings were useful to them, and space for their general comments. The results of the forms will be compiled and studied so NCIPC can better consider the needs of people who use the publications in future publication development, revisions, and distribution plans. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
NCIPC website users who access or order hours publications	360,000	1	5/60	30,000

Dated: August 4, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–20352 Filed 8–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03161]

Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) Prevention Program Development and Technical Assistance Collaboration for Public Health Laboratory Science With Countries Targeted by CDC's Global AIDS Program (GAP); Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for HIV/AIDS prevention program development and technical assistance collaboration with countries targeted by the Global AIDS Program (GAP). The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Association of Public Health Laboratories (APHL). APHL is the appropriate and only qualified agency to provide the services specified under this cooperative agreement because:

(1) APHL is the only officially established organization that represents public health laboratory science practitioners. As such, APHL represents officials from throughout the United States (U.S.) who have responsibility for all aspects of public health laboratory science, education, and management.

(2) APHL is in a unique position to act as the liaison between U.S. state and territorial public health laboratorians and GAP country health officials.

(3) APHL has wide experience in promoting the coordination of HIV/AIDS and other public health laboratory efforts among the U.S. states and territories, U.S. Government agencies, and international agencies. Thus, the organization is uniquely positioned to collaborate with national AIDS control program officials in GAP countries, international agencies and other interested parties on policy and program issues from a U.S. -based, multi-stakeholder perspective.

(4) The knowledge, skills and abilities that APHL represents through its members' expertise are of critical importance to improving the capacity of public health laboratories in GAP countries. Thus, APHL is uniquely positioned to provide CDC technical assistance by serving as a liaison between U.S. state and territorial public health laboratory officials and officials of national AIDS control programs in GAP countries. APHL possesses unique knowledge and insight that can be applied through technical assistance to strengthen the ability of GAP country national AIDS control programs to design, develop, implement and maintain HIV/AIDS public health laboratories based on the best practices of U.S. state and territorial public health laboratories.

(5) APHL has already established mechanisms for communicating HIV/AIDS laboratory practice information to the U.S. states and territories and their political subdivisions that carry out HIV/AIDS public health laboratory programs. They can use these mechanisms to exchange information between the U.S. states and territories and the public health officials in GAP countries to identify and develop effective public health laboratory information networks. This unique expertise also places APHL in the position to advise GAP country officials on developing their own national public health laboratory information networks.

C. Funding

Approximately $1,000,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Peter Crippen, Public Health Advisor, Global AIDS Program, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E., Atlanta, GA 30333, Telephone: 404–498–2712, E-mail address: *phc1@cdc.*

Dated: August 4, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–20356 Filed 8–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03151]

Institutional Strengthening of People Living With HIV/AIDS Networks in the Caribbean Region; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program to provide support to people living with HIV/AIDS in the Caribbean. This will be accomplished by developing the

communication and institutional infrastructure of the People Living with HIV/AIDS (PLWHA) Networks in the area. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Caribbean Regional Network of Persons Living with HIV/AIDS (CRN+). No other applications are solicited. This is the original, and only network of PLWHA in this region that links twenty-seven islands, seven active national networks, and a functioning regional office based in Port of Spain, Trinidad. CRN+ also has the support of the Global Network of PLWHA and the International Community of Women Living With HIV/AIDS. Since 1996, CRN+ has addressed the most pertinent issues relating to HIV/AIDS and plays an integrally esteemed role throughout the region among PLWHA and partner agencies alike. CRN+ is a member of the Pan Caribbean Partnership Against AIDS (PANCAP) that developed and implements the Caribbean regional strategic plan to combat HIV and AIDS.

C. Funding

Approximately $60,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Ethleen Lloyd, CDC GAP Caribbean Regional Office, 9 Alexandra Street, Port of Spain, Trinidad and Tobago, Phone: 1–868–622–3153, E-mail: *esl1@cdc.gov.*

Dated: August 5, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–20355 Filed 8–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0350]

Sankyo Pharma, Inc.; Withdrawal of Approval of a New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for PRELAY (troglitazone) Tablets held by Sankyo Pharma, Inc. (Sankyo Pharma), 399 Thornall St., Edison, NJ 08837. Sankyo Pharma has requested that approval of this application be withdrawn because the product is not being marketed, thereby waiving its opportunity for a hearing.

DATES: Effective August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a letter dated December 31, 2002, Sankyo Pharma requested that FDA withdraw approval, under § 314.150(d) (21 CFR 314.150(d)), of NDA 20–719 for PRELAY (troglitazone) Tablets. Sankyo U.S.A. Corp. (Sankyo U.S.A.) filed NDA 20–719 for PRELAY concurrently with Warner-Lambert Co.'s NDA 20–720 for REZULIN. Both these applications were for troglitazone tablets. Sankyo U.S.A. merged into Sankyo Pharma in December 1999. Neither Sankyo U.S.A. nor Sankyo Pharma has ever marketed PRELAY, and Sankyo Pharma has no plans to market troglitazone in the future. FDA has determined that never marketing an approved drug product is equivalent to withdrawing the drug from sale. PRELAY, a treatment for type 2 diabetes, was voluntarily withdrawn after review of safety data showed that REZULIN is more toxic to the liver than two other more recently approved drugs that offer a similar benefit (see the REZULIN withdrawal notice that published in the **Federal Register** of January 10, 2003 (68 FR 1469)). Sankyo Pharma waived its opportunity for a hearing, provided under § 314.150(a) and (b).

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.105(a)), approval of the NDA 20–719, and all amendments and supplements thereto, is withdrawn, effective August 11, 2003. Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the act (21 U.S.C. 355(a) and 331(d)).

Dated: July 10, 2003.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–20383 Filed 8–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–03–8001]

Memorandum of Understanding Between the Department of Health and Human Services of the United States Through the Food and Drug Administration and the Ministry of Health of the United Mexican States Through the Federal Commission For Protection From Sanitary Risks Covering the Safety and Quality of Fresh and Frozen Aquacultured Molluscan Shellfish Exported From the United Mexican States to the United States of America

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Department of Health and Human Services of the United States of America, through the Food and Drug Administration (FDA) and the Ministry of Health of the United Mexican States, through the Federal Commission for Protection from Sanitary Risks. This understanding is in keeping with the beneficial and cooperative work conducted under the terms of a 1988 MOU concerning the safety and quality of molluscan shellfish exported to the United States from the United Mexican States. The purpose of the MOU is to establish the set of guidelines to be implemented for assuring that molluscan shellfish exported from the United Mexican States and offered for import into the United States of America are safe for human consumption and are harvested, processed, transported, and labeled in accordance with the provision of the U.S. National Shellfish Sanitation Program, the applicable requirements of

the Federal Food, Drug, and Cosmetic Act, and other related public health laws.

DATES: The agreement became effective June 18, 2003.

FOR FURTHER INFORMATION CONTACT: Paul W. Distefano, Center for Food Safety and Applied Nutrition, (HFS–417), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1410.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c) which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: July 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES OF AMERICA THROUGH THE FOOD AND DRUG ADMINISTRATION

AND THE

MINISTRY OF HEALTH OF THE UNITED MEXICAN STATES THROUGH THE FEDERAL COMMISSION FOR PROTECTION FROM SANITARY RISKS

COVERING THE SAFETY AND QUALITY OF FRESH AND FROZEN AQUACULTURED MOLLUSCAN SHELLFISH EXPORTED FROM THE UNITED MEXICAN STATES TO THE UNITED STATES OF AMERICA

The Department of Health and Human Services of the United States of America, through the Food and Drug Administration (FDA) and the Ministry of Health of the United Mexican States, through the Federal Commission for Protection from Sanitary Risks (COFEPRIS), hereinafter referred as "The Participants",

Desiring to safeguard public health and to ensure the safety and quality of fresh and frozen aquacultured molluscan shellfish that are or may be exported into the United States of America, and

In keeping with the beneficial and cooperative work conducted under the terms of a 1988 Memorandum of Understanding concerning the safety and quality of molluscan shellfish exported to the United States of America from the United Mexican States, and

Recognizing that the Participants have held technical consultations leading to the successful development and implementation of an effective molluscan shellfish sanitation program in the United Mexican States for molluscan shellfish, and

Recognizing that nothing in this Memorandum of Understanding (MOU) will in any way abrogate the responsibility or authority of the FDA under section 801 of the Federal Food, Drug, and Cosmetic Act to examine, and, where appropriate, refuse admission of, any food product being offered for entry into the United States of America or to comply with and enforce any other law administered by the FDA, and

Acknowledging that the FDA recognizes the Mexican Shellfish Sanitation Program (MSSP) and finds that the MSSP adequately meets U.S. National Shellfish Sanitation Program (NSSP) guidelines, and that COFEPRIS retains the overall responsibility for the MSSP and coordinates participation of Mexican State Governments in the Molluscan Shellfish Program;

Have hereby reached the following understanding:

ARTICLE I
Purpose

The purpose of this MOU is to establish the set of guidelines to be implemented for assuring that molluscan shellfish exported from the United Mexican States and offered for import into the United States of America are safe for human consumption and are harvested, processed, transported, and labeled in accordance with the provisions of the NSSP Model Ordinance and the applicable requirements of the U.S. Federal Food, Drug, and Cosmetic Act, the U.S. Public Health Service Act, the U.S. Fair Packaging and Labeling Act, and Title 21 of the U.S. Code of Federal Regulations.

ARTICLE II
Definitions

For the purpose of this MOU the words listed below will have the following meaning:

1. Approved means the classification used to identify a growing area where the harvest of molluscan shellfish for direct marketing is allowed.

2. Aquaculture means the cultivation of seed in natural or artificial growing areas, or the cultivation of shellstock other than seed in natural or artificial growing areas.

3. Central file means the single location where COFEPRIS maintains a copy of all information, data, reports, and maps associated with the MSSP.

4. Lot of shellstock means a collection of bulk shellstock or containers of shellstock of no more than one day's harvest from a single defined growing area harvested by one or more harvesters.

5. Lot of shucked molluscan shellfish means a collection of containers of shucked molluscan shellfish of no more than one day's harvest from a single defined growing area, produced under conditions as nearly uniform as possible, and designated by a common container code or marking.

6. Marine biotoxins means any poisonous compound produced by marine microorganisms and accumulated by shellstock.

7. Mexican Shellfish Sanitation Program (MSSP) means the regulatory control program in the United Mexican States designed to ensure the safety of molluscan shellfish intended for export to the United States of America through the implementation of control measures set forth in the NSSP.

8. Molluscan Shellfish, means all edible species of aquacultured oysters, clams, mussels, and whole or roe on scallops; either shucked or in the shell, fresh or frozen, whole or in part.

9. National Shellfish Sanitation Program (NSSP) means the cooperative state (domestic and foreign)-FDA-industry program to ensure the safety and quality of molluscan shellfish intended for human consumption. Guidelines for ensuring the safety and quality of molluscan shellfish are set forth in the NSSP Model Ordinance.

10. Patrol means the active control of molluscan shellfish harvesting to ensure that only molluscan shellfish from approved areas are harvested, processed, and shipped.

11. Relay means the transfer of shellstock from unapproved areas to approved areas for the purpose of reducing pathogens as measured by the coliform indicator group or poisonous or deleterious substances that may be present in the shellstock by using the ambient environment as the treatment process.

12. Sanitary Survey Report means the written evaluation report of all environmental factors, including actual and potential pollution sources, which have a bearing on the water quality in a molluscan shellfish growing area.

13. Shellstock means live molluscan shellfish in the shell.

ARTICLE III
Obligations of the Participants

A. RESPONSIBILITIES OF COFEPRIS

1. COFEPRIS assumes the commitment of overall responsibility for the coordination and implementation of the MSSP.

2. COFEPRIS intends to:

   a. Maintain legal, administrative, safety, quality, and sanitary controls over molluscan shellfish intended for export to the United States of America by certified Mexican processors.

   b. Ensure that the MSSP conforms to the NSSP, including, but not limited to:

      i. classifying molluscan shellfish growing waters;

      ii. preparing sanitary survey reports and maintaining sanitary survey reports and all related data in the central file;

      iii. updating sanitary survey reports annually and triennially for the purpose of ensuring the proper classification of each molluscan shellfish growing area;

iv. approving and supervising harvesting and relaying operations and ensuring proper labeling and identification of molluscan shellfish in accordance with the NSSP;

v. restricting the harvest of molluscan shellfish from unapproved growing areas, controlling the harvest of molluscan shellfish from unapproved growing areas, and taking enforcement action against persons or firms harvesting from unapproved growing areas;

vi. prohibiting the harvest of molluscan shellfish from growing areas in response to contamination emergencies and for rescinding such prohibitions when water quality data or marine biotoxin analyses demonstrate that the area meets NSSP approved area criteria;

vii. recalling unsafe molluscan shellfish when the responsible processor fails to carry out the necessary product recall;

viii. maintaining NSSP conforming laboratories certified to participate in the MSSP;

ix. inspecting processors that process fresh or frozen aquacultured molluscan shellfish for export to the United States of America to ensure compliance with NSSP controls;

x. certifying processors exporting fresh or frozen aquacultured molluscan shellfish to the United States of America in accordance with the NSSP for listing on FDA's Interstate Certified Shellfish Shippers List (ICSSL);

xi. notifying FDA of the name, location and certification number of MSSP certified processors exporting to the United States of America on Form FD-3038, "Shellfish Dealer Certification";

xii. canceling the certification of any processor that:

operates out of compliance with the NSSP;

ships molluscan shellfish from unapproved growing areas; or

ships molluscan shellfish that otherwise do not conform to the requirements of the U.S. Federal Food, Drug, and Cosmetic Act, the U.S. Public Health Service Act, the U.S. Fair Packaging and Labeling Act, or Title 21 of the U.S. Code of Federal Regulations.

fails to recall molluscan shellfish determined to be unsafe for human consumption;

xiii. ensuring that each container in a lot of molluscan shellfish certified for export to the United States of America is properly labeled in accordance with the NSSP;

xiv. maintaining a central file of all MSSP records, including an English version of all sanitary survey reports, patrol reports, and laboratory evaluation reports and make them available to FDA upon request;

xv. providing FDA evaluation reports, interpretations, laboratory quality assurance program information, and other molluscan shellfish program information from FDA to federal and state government agencies having responsibility for the MSSP;

xvi. reviewing, at least annually, the level of conformity with the NSSP and summarizing the findings in a written report and providing an English translation of the report to FDA annually;

xvii. providing FDA with information concerning current or potential public health problems affecting molluscan shellfish intended for export to the United States of America; and

xviii. making travel arrangements in the United Mexican States for, and conducting joint inspections with, FDA evaluation officers at FDA's request. Providing transportation for FDA officials while in the United Mexican States.

c. Permit the harvesting of molluscan shellfish for processing by MSSP certified processors and shipment to the United States of America only from growing areas approved by COFEPRIS with concurrence from the FDA.

d. Within 30 days of written notification from FDA of NSSP deficiencies, develop a written Corrective Action Plan, and submit it to FDA for review and concurrence. If a Plan is not developed within 30 days, FDA will remove Mexican processors from the ICSSL and/or take other appropriate action to stop molluscan shellfish from the United Mexican States from entering the United States of America. Such action should remain in effect until all MSSP deficiencies have been corrected and FDA has determined that the MSSP is in compliance with the NSSP.

3. COFEPRIS may designate a MSSP laboratory evaluation officer to:

a. certify laboratories participating in the MSSP;

b. periodically evaluate certified MSSP laboratories to verify compliance with the NSSP and maintain laboratory quality assurance procedures;

c. maintain a marine biotoxin monitoring program for growing areas where molluscan shellfish are harvested for export to the United States of America;

d. maintain a split-sample program among MSSP laboratories for evaluating uniform microbiological laboratory practices;

e. notify FDA of laboratories not in compliance with the NSSP; and

f. prevent MSSP laboratories not in compliance with the NSSP from participating in the MSSP.

4. COFEPRIS should update the MSSP Model Ordinance to be consistent with published NSSP Model Ordinance revisions. COFEPRIS should provide an English version of all updates to FDA for review and concurrence.

5. Any change in responsibility from COFEPRIS to another authority must be reported to FDA within 30 days of such change. A change from COFEPRIS to a new authority may require re-evaluation of the MSSP by FDA.

6. Mexican states goverments participating in the MSSP are equally responsible for ensuring the safety and quality of molluscan shellfish exported to the United States of America.

B. RESPONSIBILITIES OF THE FDA

FDA intends to:

1. Accept the United Mexican States as a participant in the NSSP and the Interstate Shellfish Sanitation Conference (ISSC), cooperative research programs, seminars, training courses, and other NSSP activities and have COFEPRIS certify Mexican processors for inclusion in FDA's ICSSL.
2. Publish the names, locations, and certification numbers of Mexican firms certified by COFEPRIS in the monthly publication of the ICSSL upon receipt of Form FD-3038.

3. Provide training and technical assistance to COFEPRIS, subject to the availability of funds and personnel for such purposes.

4. Inform COFEPRIS of the reasons for any detention of certified molluscan shellfish shipments from the United Mexican States.

5. Participate with COFEPRIS in joint evaluations of the MSSP. Joint evaluations will be conducted to ascertain the level of conformity with the requirements of the NSSP and

with the responsibilities specified in this MOU. FDA should pay round trip transportation expenses between the United States of America and the United Mexican States and the per diem of the members of the FDA evaluation team while in the United Mexican States.

6. Notify COFEPRIS of NSSP deficiencies and request that COFEPRIS submit, within 30 days, a written Corrective Action Plan to FDA for review and concurrence. If a Plan is not developed within 30 days or if the deficiencies are not corrected in accordance with the Plan, FDA will remove Mexican processors from the ICSSL and/or take other appropriate action to stop Mexican molluscan shellfish from entering the United States of America. In case of a serious public health threat, this 30 day period may be reduced or eliminated. Such action should remain in effect until all NSSP deficiencies have been corrected and FDA has determined that the MSSP is in compliance with the NSSP.

7. Remove individual Mexican processors from the ICSSL when it is determined by FDA or COFEPRIS that a processor is not in compliance with the NSSP or when an imminent health hazard exists with a processor's product.

8. Report any change in responsibility from FDA to another federal authority to COFEPRIS within 30 days of such change.

ARTICLE IV
Technical Information Exchange

The working language for documents exchanged under this MOU should be English. The Participants plan to share expertise, provide assistance, and exchange information. Such mutual cooperation may include, but is not be limited to:

1. Exchanging information concerning proposed and final changes in MSSP operations and procedures including, but not limited to:

a. methods and procedures for sampling;

b. methods of analysis;

c. methods of confirmation;

d. administrative guidelines, tolerances, specification standards, and nomenclature;

e. reference standards; and

f. inspection procedures.

2. Providing written notification to the other Participant within 30 days of changes in liaison officers. Changing liaison officers does not otherwise constitute a change in the provisions of this MOU.

3. Facilitating the exchange of information between COFEPRIS and U.S. Federal and State agencies concerned with the introduction and proliferation of exotic organisms that might be carried by Mexican molluscan shellfish.

ARTICLE V
Liaison Officers

In order to obtain an adequate follow up of the cooperation activities derived from this MOU, the liaison officers will be

A. For COFEPRIS:

Director (a) General de Control Sanitario de Productos y Servicios
Comision Federal para la Proteccion Contra Riegos Sanitarios (COFEPRIS)
Av. Monterrey No. 33
Col. Roma C.P. 06700
Del. Cuauhtemoc
Mexico, D.F., Estados Unidos Mexicanos
Telephone: 011 52 55 5080 5200 ext. 1254; 1259; 1230

B. For the Food and Drug Administration:

Director, Office of Seafood
Center for Food Safety and Applied Nutrition
Food and Drug Administration,
5 100 Paint Branch Parkway (HFS-400)
College Park, MD 20740
The United States of America
Telephone: 01301436-2300

ARTICLE VI
Final Dispositions

Activities under this MOU commence upon signature by both Participants and continue for five (5) years. It may be extended with written consent of both Participants.

The Participants intend to evaluate the MOU during the five-year period. It may be amended by written consent of both Participants, specifying the date in which the activities will commence.

All activities undertaken pursuant to this MOU are to be conducted in accordance with the laws and regulations of the United States of America and the United Mexican States and are subject to the availability of personnel, resources, and appropriated funds.

This MOU is not intended to create any obligations under international or other law.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Government agencies, have signed this Memorandum of Understanding.

Signed in San Antonio, Texas on this Eighteenth day of June, in quadruplicate: two copies each in English and Spanish languages, respectively,

FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES OF AMERICA

MARK B. MC CLELLAN
Commissioner,
Food and Drug Administration

From the Food and Drug Administration

FOR THE MINISTRY OF HEALTH OF THE UNITED MEXICAN STATES

LIC. ERNESTO ENRIQUEZ RUBIO
Federal Commissioner for the Protection from Sanitary Risks

From the Federal Commission for the Protection from Sanitary Risks

MEMORANDUM DE ENTENDIMIENTO

ENTRE

EL DEPARTAMENTO DE SALUD Y SERVICIOS SOCIALES DE LOS ESTADOS UNIDOS DE AMERICA A TRAVES DE LA ADMINISTRACION DE ALIMENTOS Y FARMACOS

Y

LA SECRETARIA DE SALUD DE LOS ESTADOS UNIDOS MEXICANOS A TRAVES DE LA COMISION FEDERAL PARA LA PROTECCION CONTRA RIESGOS SANITARIOS

SOBRE

LA INOCUIDAD Y CALIDAD DE LOS MOLUSCOS BIVALVOS DE ACUICULTURA, FRESCOS Y CONGELADOS, EXPORTADOS DE LOS ESTADOS UNIDOS MEXICANOS A LOS ESTADOS UNIDOS DE AMERICA

El Departamento de Salud y Servicios Sociales *(Department of Health and Human Services)* de los Estados Unidos de America, a traves de la Administraci6n de Alimentos y Farmacos *(Food and Drug Administration,* FDA), y la Secretaria de Salud de los Estados Unidos Mexicanos, a traves de la Comisi6n Federal para la Protecci6n contra Riesgos Sanitarios (COFEPRIS), en to sucesivo denominadas como "las Partes";

DESEOSOS de salvaguardar la salud piublica y de velar por la inocuidad y calidad de los moluscos bivalvos provenientes de la acuicultura, frescos y congelados, que se exporten o puedan exportarse a los Estados Unidos de America,

CONSCIENTES de la labor beneficiosa y cooperativa que se llev6 a cabo en los terminos del Memorando de Entendimiento de 1988 relativo a la inocuidad y calidad de los moluscos bivalvos exportados de los Estados Unidos Mexicanos a los Estados Unidos de America,

CONSIDERANDO las consultas tecnicas que han dado lugar a la elaboraci6n y aplicaci6n en los Estados Unidos Mexicanos de un programa sanitario eficaz para los moluscos bivalvos,

RECONOCIENDO que ninguna de las disposiciones del presente Memorando de Entendimiento menoscabara de manera alguna la responsabilidad y autoridad de la FDA, conforme a la secci6n 801 de la Ley Federal de Alimentos, Farmacos y Cosmeticos, de examinar cualquier producto alimenticio que se ofrezca para entrar en los Estados Unidos de America, y cuando resulte conveniente, rehusarle la entrada, y de acatar y hacer cumplir cualquier otra ley que administre la propia FDA,

OBSERVANDO que la FDA reconoce el Programa Mexicano de Sanidad de Moluscos Bivalvos (PMSMB) y considera que cumple adecuadamente con las pautas del Programa

Nacional Estadounidense de Sanidad de los Moluscos Bivalvos *(United States National Shellfish Sanitation Program,* NSSP, y que la COFEPRIS tiene la responsabilidad general con respecto al PMSMB y coordina la participacion de los Gobiernos de las Entidades Federativas Mexicanas en el Programa de los Moluscos Bivalvos,

Han acordado to siguiente:

ARTICULO I

Objetivo

El presente Memorandum de Entendimiento tiene como objetivo establecer los lineamientos que deben aplicarse para asegurar que los moluscos bivalvos que se exporten de los Estados Unidos Mexicanos y se ofrezcan para la importacion en los Estados Unidos de America sean inocuos para el consumo humano y se recolecten, elaboren, transporten y rotulen conforme a los requisitos exigidos por la ordenanza modelo del NSSP y a los requisitos pertinentes de la Ley Federal de los Estados Unidos de America sobre Alimentos, Farmacos y Cosmeticos (U.S. *Federal Food, Drug and Cosmetic Act),* la Ley del Servicio Sanitario Publico de los Estados Unidos de America (U.S. *Public Health Service Act),* la Ley de los Estados Unidos de America sobre Empaquetado y Etiquetado Justos (U.S. *Fair Packaging and Labeling Act),* y el Titulo 21 del Codigo de los Reglamentos Federales de los Estados Unidos de America *(United States Code of Federal Regulations).*

ARTICULO II

Defmiciones

Para los propositos de este Memorandum de Entendimiento los terminos que a continuacion se detallan tendran el significado siguiente:

1. Por aprobado se entiende la clasificacion que se emplea para senalar cuales son las zonas de cria donde se permite la recolecta de moluscos bivalvos para su comercializacion directa.

2. Por acuicultura se entiende la cria, en zonas naturales o artificiales, de semillas o de moluscos bivalvos en concha que ya no esten en la fase de semilla.

3. Por archivo central se entiende el lugar unico donde la COFEPRIS guarda copias de toda la informacion, datos, informes y mapas relativos al NSSP.

4. Por lote de moluscos bivalvos en concha se entiende un conjunto a granel o en envases de moluscos bivalvos en concha correspondiente a no mas de un dia de cosecha, procedente de una sola zona de cultivo definida y recolectado por un colector o por mas.

5. Por Tote de moluscos bivalvos desconchados se entiende un conjunto de envases de moluscos bivalvos separados de las conchas, obtenido de no mas de un dia de cosecha, procedente de una Bola zona de cultivo definida, producido en las condiciones mas uniformes posibles e identificado por una sepal o marca comun colocada en cada envase.

6. Por biotoxinas marinas se entiende cualquier compuesto venenoso producido por microorganismos marinos y acumulado en los moluscos bivalvos en concha.

7. Por Programa Mexicano de Sanidad de Moluscos Bivalvos (PMSMB) se entiende el programa de control reglamentario de los Estados Unidos Mexicanos, dirigido a asegurar, por la aplicaci6n de las medidos de control consignadas en el NSSP, la inocuidad de los moluscos bivalvos destinados a la exportaci6n a los Estados Unidos de America.

8. Por molusco bivalvo se entiende todas las especies comestibles, obtenidas por acuicultura, de ostiones, almejas, mejillones y escalopas enteras o en partes; con o sin conchas, frescos o congelados, enteros o en partes.

9. Por Programa Nacional Estadounidense de Sanidad de los Moluscos Bivalvos *(United States National Shellfish Sanitation Program,* NSSP) se entiende el programa cooperativo para velar por la inocuidad y calidad de los moluscos bivalvos destinados al consumo humano que se lleva a cabo entre estados (estadounidenses o no), la FDA y la industria. Las pautas para velar por la inocuidad y calidad de los moluscos bivalvos se consignan en la Ordenanza Modelo del NSSP (NSSP *Model Ordinance).*

10. Por patrullaje se entiende el control activo de la recolecta de moluscos bivalvos para asegurar que s6lo se recolecten, elaboren y envien los que procedan de las zonas aprobadas.

11. Por confinamiento se entiende la transferencia de moluscos bivalvos en concha de unas zonas no aprobadas a las aprobadas, con el fin de reducir los pat6genos (medidos por el grupo indicador de las bacterias coliformes) o las sustancias venenosas o daninas que se hallen en los moluscos bivalvos en concha, haciendo use del ambiente natural como medio de depuraci6n.

12. Por informes de inspecci6n sanitaria se entiende los informes evaluativos acerca de todos los factores medioambientales, incluidas las fuentes actuales y posibles de contaminaci6n, que puedan tener efectos sobre la calidad del agua en una zona de cria de moluscos bivalvos.

13. Por moluscos bivalvos en concha se entiende los moluscos bivalvos vivos en sus conchas.

ARTICLE III

Responsabilidades de las Partes

A. LAS OBLIGACIONES DE LA COFEPRIS

1. Ejercer la coordinacion y puesta en practica generales del PMSMB.

2. La COFEPRIS se propone:

a. Ejercer los controlas juridicos, administrativos, sanitarios y de inocuidad y calidad con respecto a los moluscos bivalvos destinados a la exportacion a los Estados Unidos de America por procesadores mexicanos autorizados.

b. Velar por que el PMSMB se ajuste al NSSP, inclusive en to siguiente, pero no limitandose a:

i. clasificar las aguas de cria de los moluscos bivalvos.

ii. preparar informes de inspeccion sanitaria y guardar los mismos, asi como todos los datos conexos, en un archivo central.

iii. actualizar, de forma anual y trienal, los informes de inspeccion sanitaria, para asegurar que cads zona de cria de moluscos bivalvos tenga su debida clasificacion.

iv. aprobar y supervisar las operaciones de recolecta y confinamiento y velar por que los moluscos bivalvos se identifiquen y etiqueten conforme al NSSP.

v. restringir y controlar la recolecta de moluscos bivalvos en las zonas de cria no aprobadas, y tomar medidas coercitivas contra las personas o las empresas que hagan la recolecta de moluscos bivalvos en dichas zonas.

vi. prohibir la recolecta de moluscos bivalvos en zonas de cria en emergencias que causen contaminacion, y rescindir esas prohibiciones cuando los datos de la calidad del agua o los analisis de las biotoxinas marinas demuestren que dichas zonas satisfacen los criterion de aprobacion del NSSP.

vii. retirar los moluscos bivalvos que no sean aptos para el consumo, cuando el procesador responsable incumpla su obligacion de retirarlos el mismo del mercado.

viii. conseguir que en el PMSMB participen laboratorios acreditados que se ajusten al NSSP.

ix. inspeccionar a los procesadores que elaboran moluscos bivalvos de acuicultura, frescos o congelados, para exportarlos a los Estados Unidos de America, a fin de asegurarse de que cumplen con los controles del NSSP.

x. autorizar a procesadores que exporten a los Estados Unidos de America moluscos bivalvos de acuicultura, frescos o congelados, conforme al NSSP, para que figuren en la Lista Interestatal de la FDA de Procesadores Autorizados de Moluscos Bivalvos *(Interstate Certified Shellfish Shippers List,* ICSSL).

xi. por medio del Formulario FD-3038, Autorizacion de los Procesadores de Moluscos Bivalvos *(Shellfish Dealer Certification),* notificar a la FDA el nombre, la direccion y el numero de autorizacion del PMSMB de los procesadores autorizados a que exporten a los Estados Unidos de America.

xii. invalidar la autorizacion de todo procesador:

- cuyas operaciones no esten de conformidad con el NSSP.

- que distribuya moluscos bivalvos recolectados en zonas no aprobadas.

- que distribuya moluscos bivalvos que por otras causas no esten de conformidad con las exigencias de la Ley Federal de los Estados Unidos de America sobre Alimentos, Farmacos y Cosmeticos, la Ley del Servicio Sanitario Piublico de los Estados Unidos de America, la Ley de los Estados Unidos de America sobre Empaquetado y Etiquetado Justos o el Titulo 21 del Codigo de los Reglamentos Federales de los Estados Unidos de America.

- que no retire del mercado los moluscos bivalvos acerca de los cuales se haya llegado a la conclusion de que no son aptos para el consumo humano.

xiii. asegurarse de que cada envase en un lote de moluscos bivalvos autorizado para la exportacion a los Estados Unidos de America este etiquetado debidamente conforme al NSSP.

xiv. guardar un archivo central de toda la documentacion del PMSMB, incluida la version en ingles de todos los informes de inspeccion sanitaria, patrullaje y analisis de laboratorio, y permitir que la FDA tenga acceso a ella, previa solicitud.

xv. proporcionar a los organismos federales y estatales a cargo del PMSMB, los informes evaluativos, las interpretaciones, la informacion de laboratorio relativa al programa de garantia de la calidad y demas

informacion acerca del programa sobre los moluscos bivalvos proveniente de la FDA.

xvi. por to menos una vez al ano, examinar el nivel de conformidad con el NSSP y resumir los resultados en un informe escrito, proporcionando a la FDA anualmente una traducci6n al ingles del mismo.

xvii. proporcionar informaci6n a la FDA acerca de los peligros efectivos o posibles para la salud pdblica de los moluscos bivalvos destinados a la exportacion a los Estados Unidos de America.

xviii. previa solicitud de la FDA, organizar viajes por los Estados Unidos Mexicanos de los funcionarios evaluadores de la FDA, efectuar inspecciones conjuntas con estos y proporcionarles transporte durante su estancia en los Estados Unidos Mexicanos.

c. Permitir que los moluscos bivalvos que elaboren los procesadores autorizados por el PMSMB para la exportaci6n a los Estados Unidos de America se recolecten unicamente en zonas de cria aprobadas por la COFEPRIS con el asentimiento de la FDA.

d. En el plazo de 30 dias del recibo de una notificacion escrita por la FDA acerca de cualquier deficiencia observada con respecto a to dispuesto en el NSSP, redactar por escrito un Plan de Acci6n Correctiva y presentarlo a la FDA para el examen y asentimiento de esta. Si ese Plan no se redacta en dicho plazo, la FDA tomara las medidas pertinentes para evitar que los moluscos bivalvos de los Estados Unidos Mexicanos entren en los Estados Unidos de America, entre ellas, retirar a los procesadores mexicanos de la ICSSL. Esas medidas permaneceran en efecto mientras no se corrijan todas las deficiencias del PMSMB con respecto a to dispuesto en el NSSP y mientras la FDA no haya llegado a la conclusion de que el PMSMB se ajusta al NSSP.

3. La COFEPRIS pods nombrar a un funcionario de evaluacion de laboratorios para:

a. Acreditar los laboratorios participantes en el PMSMB.

b. Evaluar peri6dicamente los laboratorios acreditados para el PMSMB, a fin de verificar que esten de conformidad con el NSSP y que observen los debidos procedimientos de laboratorio para el aseguramiento de la calidad.

c. Llevar a cabo un programa de vigilancia de las biotoxinas marinas en las zonas de cria donde se recolecten moluscos bivalvos para la exportaci6n a los Estados Unidos de America.

d. Llevar a cabo un programa de muestras divididas entre los laboratorios participantes en el PMSMB, para evaluar la uniformidad de sus practicas microbiol6gicas.

e. Notificar a la FDA acerca de los laboratorios que no se ajusten a to dispuesto por el NSSP.

f. Impedir que los laboratorios que no se ajusten a to dispuesto por el NSSP participen en el PMSMB.

4. La COFEPRIS debera actualizar la Ordenanza Modelo del PMSMB para que sea congruente con las revisiones publicadas de la Ordenanza Modelo del NSSP. La COFEPRIS facilitara una versi6n en ingles de todas las actualizaciones, para el examen y asentimiento de la FDA.

5. Toda transferencia de responsabilidades de la COFEPRIS a otra autoridad debera notificarse a la FDA en un plazo de 30 dias. Dicha transferencia de responsabilidades podria requerir otra evaluaci6n del PMSMB por parte de la FDA.

6. Los Gobiernos de las Entidades Federativas Mexicanas que participen en el PMSMB son igualmente responsables de asegurar la inocuidad y calidad de los moluscos bivalvos exportados a los Estados Unidos de America.

B. LAS OBLIGACIONES DE LA FDA

La FDA se propone:

1. Aceptar a los Estados Unidos Mexicanos como participantes en el NSSP, la Conferencia Interestatal de Sanidad de Moluscos Bivalvos *(Interstate Shellfish Sanitation Conference,* ICSSL), los programas cooperativos de investigaci6n, los seminarios, los cursos de capacitaci6n y otras actividades del NSSP, y que la COFEPRIS autorice la incorporacibn de procesadores mexicanos a la ICSSL de la FDA.

2. Publicar los nombres, direcciones y niumeros de autorizaci6n de las empresas mexicanas autorizadas por la COFEPRIS en la publicaci6n mensual de la ICSSL, al recibo del Formulario FD-3038.

3. Facilitar capacitaci6n y asistencia t6cnica a la COFEPRIS, siempre y cuando haya fondos y personal disponibles para esos fines.

4. Informar a la COFEPRIS de las razones para la detenci6n de cualquier envio de moluscos bivalvos de los Estados Unidos Mexicanos.

5. Participar con la COFEPRIS en evaluaciones conjuntas del PMSMB, para averiguar en que medida se ajusta a los requisitos del NSSP y a las obligaciones consignadas en el presente Memorandum de Entendimiento. La FDA sufragara los gastos de viaje de ida y vuelta entre los Estados Unidos de America y los Estados Unidos Mexicanos y los viaticos de los evaluadores de la FDA mientras se encuentren en los Estados Unidos Mexicanos.

6. Notificar a la COFEPRIS de las deficiencias observadas con respecto a to dispuesto en el NSSP, y solicitar a la COFEPRIS que presente por escrito, en el plazo de 30 dias, un Plan de Accion Correctiva a la FDA para su examen y asentimiento. Si el Plan no se elabora en dicho plazo o si las deficiencias no se corrigen conforme al Plan, la FDA tomara las medidas pertinentes para evitar que los moluscos bivalvos de los Estados Unidos Mexicanos entren en los Estados Unidos de America, entre ellas, retirar a los procesadores mexicanos de la ICSSL. Si se presenta una amenaza grave para la salud piiblica, el plazo de 30 dias puede acortarse o eliminarse. Las medidas de la FDA permaneceran en vigor hasta que todas las deficiencias con respecto al NSSP se hayan corregido y la FDA haya llegado a la conclusion de que el PMSMB se ajusta al NSSP.

7. Retirar a procesadores mexicanos especificos de la ICSSL cuando la FDA o COFEPRIS llegue a la conclusion de que esos procesadores no cumplen con el NSSP o cuando su producto represente un peligro inminente para la salud.

8. Informar a COFEPRIS acerca de toda transferencia de responsabilidades de la FDA a otra autoridad federal, en el plazo de 30 dias a partir de la fecha de la transferencia.

ARTICULO IV

Intercambio de Informacion Tecnica

Las Partes se proponen intercambiar conocimientos tecnicos; proporcionarse asistencia, e intercambiar informaci6n, la cual debera estar redactada en idioma ingles. En esa colaboraci6n se podran incluir, mas no se limitaran a, los siguientes aspectos:

1. El intercambio de informaci6n acerca de las modificaciones propuestas y definitivas en el funcionamiento y los procedimientos del PMSMB, to que incluira, entre otros, los siguientes aspectos:

a. metodos y procedimientos de muestreo.

b. metodos de analisis.

c. metodos de confirmaci6n.

d. pautas administrativas, variaciones permisibles, normas para las especificaciones y nomenclatura.

e. normas para referencia y

f. procedimientos de inspeccion.

2. La notificaci6n escrita a la otra Parte de los cambios ocurridos en los funcionarios de enlace, en el plazo de 30 dias. El cambio de dichos funcionarios no alterara por to demas las disposiciones del presente Memorandum de Entendimiento.

3. La facilitación del intercambio de información entre la COFEPRIS y los organismos federales y estatales estadounidenses que tengan que ver con la introducción y proliferación de los organismos exóticos que pudieran portar los moluscos bivalvos mexicanos.

ARTICULO V

Funcionarios de enlace

Para el adecuado seguimiento de las actividades de cooperación derivadas del presente Memorandum de Entendimiento, las autoridades responsables seran:

A. De la COFEPRIS:

Director(a) General de Control Sanitario de Productos y Servicios
Comisión Federal para la Protección contra Riesgos Sanitarios (COFEPRIS)
Avenida Monterrey N° 33
Col. Roma C.P. 06700
Del. Cuauhtemoc
Mexico, DR, Estados Unidos Mexicanos
Telefono 011 52 55 5080, ext. 1254, 1259, 1230

B. De la FDA:

Director, Office of Seafood
Center for Food Safety and Applied Nutrition
Food and Drug Administration
5 100 Paint Branch Parkway (HFS-400)
College Park, MD 20740
United States of America
Telefono 01301436-2300

ARTICULO VI

Disposiciones Finales

El presente Memorandum de Entendimiento entrara en vigor a partir de la fecha de su firma y tendra una duración de cinco (5) anos, prorrogables mediante consentimiento escrito de las partes.

Las partes se proponen evaluar este Memorandum de Entendimiento durante el periodo de cinco afos y podra ser modificado por mutuo consentimiento, formalizado a traves de comunicaciones escritas, en las que se especifique la fecha de su entrada en vigor.

Las actividades emprendidas con arreglo al presente Memorandum de Entendimiento se efectuaran conforme a las leyes y los reglamentos de los Estados Unidos Mexicanos y de los Estados Unidos de America, y dependeran de la disponibilidad de personal, recursos y fondos consignados.

El presente Memorando no se propone generar obligaciones conforme al derecho internacional u otras leyes.

En fe de to cual los infrascritos, habiendo sido autonzados debidamente por sus organismos respectivos, han firmado el presente Memorando de Entendimiento.

Firmado en la Ciudad de San Antonio, Texas, el 18 de junio de 2003, en cuadruplicado en los idiomas espanol e ingles, siendo ambos textos igualmente autenticos.

POR EL DEPARTAMENTO DE SALUD Y SERVICIOS HUMANOS DE LOS ESTADOS UNIDOS DE AMERICA

MARK B. MC CLELLAN

Comisionado de la Administracion de Alimentos y Farmacos

De la Administracion de Alimentos y Farmacos

POR LA SECRETARIA DE SALUD DE LOS ESTADOS UNIDOS MEXICANOS

LIC. ERNESTO ENRIQUEZ RUBIO

Comisionado Federal para la Proteccion contra Riesgos Sanitarios

De la Comision Federal para la Proteccion contra Riesgos Sanitarios

[FR Doc. 03–20246 Filed 8–8–03; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Health Service Corps (NHSC) Travel Request Worksheet, Non-Federal Personnel—In Use Without Approval

The National Health Service Corps (NHSC), of the HRSA's Bureau of Health Professions (BHPr), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The NHSC (sections 331–338 of the Public Health Service Act) collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives, the NHSC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends.

The Travel Request Worksheet is used by NHSC Scholarship Program recipients to receive travel funds from the Federal Government to perform pre-employment interviews at sites on the Approved Practice List. The travel approval process is initiated when the scholar notifies the NHSC's In-Service Support Branch or the respective Bureau of Prisons, Indian Health Service, or Immigration and Naturalization Service recruitment office of an impending interview at one or more NHSC approved practice sites.

The Travel Request Worksheet is also used to initiate the relocation process after an NHSC scholar has successfully match to an approved practice site. Upon receipt of the Travel Request Worksheet, the NHSC will review and approve or disapprove the request and promptly notify the NHSC contractor whether to authorize the funding for the relocation.

Estimates of annualized reporting burden are as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response (minutes)	Total burden hours
Health Care Professionals	311	2	4	41

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number 202–395–6974.

Dated: August 5, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–20382 Filed 8–8–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

Strategic Plan

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Solicitation of comments for updating the Strategic Plan.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is soliciting comments on its revised Strategic Plan. In accordance with the requirements of the Government Performance and Results Act of 1993 that agencies update their Strategic Plans every three years, OFHEO has developed its draft 2003–2008 Strategic Plan and is soliciting the views and suggestions of those entities potentially affected by or interested in the plan. OFHEO's draft Strategic Plan, for FY 2003–2008, may be viewed on the OFHEO Web site at *www.ofheo.gov/OFHEOReports.asp*.

DATES: Written comments regarding the draft Strategic Plan may be received through August 27, 2003.

ADDRESSES: All comments concerning the notice should be addressed to: Susan S. Jacobs, Associate Director, Office of Strategic Planning and Management, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Third Floor, Washington, DC 20552. Comments may also be submitted via electronic mail to: *StrategicPlan@ofheo.gov*. OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word or in portable document format (PDF) on 3.5'' disk.

FOR FURTHER INFORMATION CONTACT: Susan S. Jacobs, Associate Director, Office of Strategic Planning and Management, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Third Floor, Washington, DC 20552, telephone (202) 414–3821 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Office of Federal Housing Enterprise Oversight (OFHEO) is charged by Congress, as established in Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, with the mandate of overseeing the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, Fannie Mae and Freddie Mac (the ''Enterprises'').

Three years ago, OFHEO adopted a Strategic Plan covering FY 2000–2005. Section 306 of the Government Performance and Results Act of 1993 (GPRA), 31 U.S.C. 1115 *et seq.*, requires that agencies update and revise their Strategic Plans every three years. OFHEO has drafted a new plan for FY 2003–2008 that describes the agency's mission, strategic goals, and strategies to achieve them. This plan will provide a framework for the years ahead. OFHEO uses its Strategic Plan to guide each year's performance goals, which are described in OFHEO's Annual Performance Plans. They may be viewed

on the OFHEO Web site at *http://www.ofheo.gov* in the ''News Center & FOIA'' section under ''Reports.''

In today's notice, OFHEO is soliciting comments to be considered on its revised plan. OFHEO will then submit its Strategic Plan pursuant to the statutory requirements.

Dated: August 5, 2003.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 03–20394 Filed 8–8–03; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AI39

Notice of Availability; Final Environmental Impact Statement on Double-Crested Cormorant Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement on double-crested cormorant management.

SUMMARY: This notice advises the public of the availability of the Final Environmental Impact Statement (FEIS) on double-crested cormorant management. The FEIS follows publication of a Draft Environmental Impact Statement (DEIS) and a proposed rule, each of which had extensive public comment periods. The FEIS analyzes the direct, indirect, and cumulative impacts related to double-crested cormorant management and provides the public with responses to comments received on the DEIS.

DATES: The period of availability for public review for the FEIS ends 30 days following publication of the EPA notice of availability in the **Federal Register**. After that date, we will publish a final rule and Record of Decision.

ADDRESSES: You can obtain a copy of the FEIS by writing to the Division of Migratory Bird Management, 4401 N. Fairfax Drive, MBSP–4107, Arlington, VA 22203; by emailing us at *cormorants@fws.gov;* or by calling us at 703/358–1714. We will also post the FEIS on our Web site at *http://migratorybirds.fws.gov/issues/cormorant/cormorant.html.*

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, at 703/358–1714.

SUPPLEMENTARY INFORMATION: On November 8, 1999, we published a notice in the **Federal Register** (64 FR 60826) announcing our intent to prepare, in cooperation with the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS/WS), an Environmental Impact Statement (EIS) to address ''impacts caused by population and range expansion of the double-crested cormorant [DCCO] in the contiguous United States.'' The notice of intent also marked the beginning of a public scoping period. The purpose of scoping, which included 12 public meetings, was to identify significant issues to be addressed in the EIS. More than 900 people attended the public scoping meetings, with 239 providing oral comments, and over 1,450 people submitted written comments. Comments fell into two categories: issues of concern and suggested management options. Issues of concern included impacts on sport fishing, local economies, aquaculture/commercial fishing, bird species, ecological balance, vegetation, human health and safety, and private property. Management options that were suggested included controlling DCCO populations, not managing DCCOs, removing DCCOs from the protection of the Migratory Bird Treaty Act, hunting, focusing on non-lethal control, allowing State management of DCCOs, changing the permit policy, oiling eggs, giving APHIS/WS more authority, basing decisions on the best science, using population objectives, and increasing education efforts. The scoping period ended on June 16, 2000.

On December 3, 2001, we published a notice in the **Federal Register** announcing the availability of the DEIS for public review (66 FR 60218). This was followed by a 100-day public comment period, which included 10 public meetings. The DEIS analyzed the predicted environmental impacts of six management alternatives for addressing problems associated with increasing DCCO populations. These management alternatives were: (1) No Action, or continue current cormorant management practices (Alternative A); (2) implement only nonlethal management techniques (Alternative B); (3) expand current cormorant damage management practices (Alternative C); (4) establish a new depredation order to address public resource conflicts (Alternative D — proposed action); (5) reduce regional cormorant populations (Alternative E); and (6) establish frameworks for a cormorant hunting season (Alternative F). The biological and socioeconomic resource categories evaluated in relation to each alternative included DCCO populations, fish, other birds, vegetation, federally listed threatened and endangered species, water quality and human health, economic impacts (aquaculture and recreational fishing economies), fish hatcheries and environmental justice, property losses, and existence and aesthetic values.

We received 994 letters, faxes, and email messages commenting on the DEIS. Of the 994 letters received, 764 of these stated a preference for a specific alternative. These results were: 32.2 percent chose Alternative D (proposed action) as the best alternative; 25.8 percent chose Alternative E (population reduction); 16.9 percent chose Alternative A (No Action); 11.8 percent chose Alternative F (hunting); 11.8 percent chose Alternative B (non-lethal methods); and <1 percent chose Alternative C (increased local damage control). Our responses to significant comments can be found in Chapter 7 of the FEIS.

In response to concerns about the public resource depredation order being too broad in scope, we made two changes to the order which were subsequently described in a proposed rule published in the **Federal Register** on March 17, 2003 (68 FR 12653). These changes limit the public resource depredation order to 24 States (rather than the 48 originally proposed in the DEIS) and limit its applicability to land and freshwater (not saltwater). The 24 States were chosen based on locations of significant numbers of wintering, migrating, or breeding birds from the Interior and Southern DCCO populations. Saltwater areas were excluded because impacts have not been documented there.

Additionally, we changed the order so that it applied only to State fish and wildlife agencies, federally recognized Tribes, and APHIS/WS, and we expanded allowable control techniques to include egg oiling, egg and nest destruction, cervical dislocation, shooting, and CO_2 asphyxiation. APHIS/WS was added since it is the chief Federal wildlife damage control agency and has considerable expertise in managing DCCOs. Control techniques were selected to include all effective and humane techniques. As stated in the proposed rule, these modifications do not constitute significant changes to the DEIS analysis and are addressed, as needed, in the FEIS.

Following publication of the proposed rule, the public had 60 days to provide comments. This comment period led to additional modifications to the proposed action, including the addition

of another month for allowing roost control under the aquaculture depredation order (October to April). In compliance with Section 7 of the Endangered Species Act, we completed informal consultation and, subsequently, added conservation measures to protect bald eagles, wood storks, piping plovers, and interior least terns. These changes are considered in the FEIS analysis and will be discussed in greater detail in the final rule.

Like the DEIS, the FEIS analyzed the direct, indirect, and cumulative environmental impacts we predict would be associated with six DCCO management alternatives. The first chart below summarizes the impacts of DCCOs under the No Action alternative (*i.e.*, the status quo), as detailed in the FEIS. The second chart below summarizes effects on the FEIS resource categories that we predicted would occur as a result of implementing the proposed action.

Alternative A: no action	
Other bird populations	Suspected conflicts and in some cases confirmed conflicts associated with habitat destruction and nest site competition; significance localized.
Fish	Suspected and in some cases confirmed conflicts; significance localized.
Vegetation/habitat	Destruction of vegetation confirmed; significance localized.
Threatened and endangered species	Suspected but not confirmed conflicts with Atlantic salmon and various Pacific salmonids; very likely, however, that other factors are more important than DCCOs in the decline of salmon.
Water quality and human health	Accused of being a source of groundwater contamination but this is not confirmed; can cause direct, open water contamination.
Aquaculture	Confirmed economic impacts on aquaculture production.
Recreational fishing economies	Correlative evidence that DCCOs are a factor behind economic declines in communities dependent on recreational fishing; not confirmed.
Fish hatcheries and justice	Confirmed depredation of hatchery stock with significance localized; effect on ability to provide hatchery fish to low-income groups not confirmed.
Property losses	Confirmed conflicts with some property interests; significance localized.
Existence and aesthetic values	Effect on values differs with perspective; DCCOs may appeal to some individual's sense of aesthetics, while not appealing to others.

Proposed action alternative D: public resource depredation order	
DCCO populations	No significant impact to regional or continental populations; estimated annual take of 159,635.
Other bird populations	Local disturbances likely, but can be managed to avoid significant impacts; will help overall.
Fish	Will help reduce predation in localized situations.
Vegetation/habitat	Will help reduce impacts in localized situations.
Threatened and endangered species	No adverse impacts with implementation of conservation measures.
Water quality and human health	Will help reduce impacts in localized situations
Aquaculture	Will help reduce depredation.
Recreational fishing economies	Not likely to benefit.
Fish hatcheries and environmental justice	Will help reduce depredation.
Property losses	Could help to indirectly reduce losses.
Existence and aesthetic values	Effects on values differs with perspective.

Dated: August 1, 2003.

Steve Williams,

Director.

[FR Doc. 03–20376 Filed 8–8–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1020–AC–241A]

Notice of Amendment of Meeting Date, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of amendment of public meeting date.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting originally published in the July 8, 2003, **Federal Register** for August 12 and 13, 2003, has been changed and will be held on August 13 only. The meeting will be held on August 13 at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado from 9:15 a.m. to 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado. The planned agenda topic is for the Council to discuss the Sustaining Working Landscapes Initiative Overview and provide comments and advice to the BLM Colorado State Director through the Center Manager.

All meetings are open to the public. The public is encouraged to make oral comments to the Council between 10 a.m. and 11 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM), Attn: Ken Smith, 3170 East Main Street,

Canon City, Colorado 81212. Phone (719) 269–8500.

Dated: August 4, 2003.

John L. Carochi,

Front Range Center Manager.

[FR Doc. 03–20236 Filed 8–8–03; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty-in-Kind (RIK) Eligible Refiner, Determination of Need

AGENCY: Minerals Management Service, Interior.

ACTION: Solicitation of comments.

SUMMARY: The Minerals Management Service (MMS), an agency of the U.S. Department of the Interior, is requesting written comments from interested parties—particularly from small and/or independent petroleum refiners—regarding their experiences in the crude oil marketplace. Specifically, we are interested in small and/or independent refiners' experiences in gaining access to adequate supplies of crude oil at equitable prices. This Determination of Need process will assist the Secretary of the Interior in deciding whether or not to continue with sales of Federal Government royalty oil under the RIK eligible refiner program.

DATES: Submit written comments on or before September 25, 2003.

ADDRESSES: Address your comments and suggestions regarding this proposal to Sharron L. Gebhardt, Regulatory Specialist.

By regular U.S. mail: Center for Excellence, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 320B2, Denver, Colorado 80225–0165; or

By overnight mail or courier: Attn: Sharron L. Gebhardt, (303) 231–3211, Center for Excellence, Minerals Revenue Management, Minerals Management Service, Building 85, Room A614, Denver Federal Center, Denver, Colorado 80225–0165; or

By fax: Please submit fax Attn: Sharron L. Gebhardt, fax (303) 231–3781, Re: ''Determination of Need'' and your name and return address in your fax message. If you do not receive a confirmation that we have received your fax message, call the contact person listed below.

By e-mail: MRM.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include ''Attn: Determination of Need'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt at telephone (303) 231–3211, fax (303) 231–3781, or P.O. Box 25165, MS320B2, Denver Federal Center, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION:

Introduction: Under the provisions of the Mineral Leasing Act of 1920 (MLA), as amended (30 U.S.C. 192), and the Outer Continental Shelf Lands Act (OCSLA) of August 7, 1953, as amended (43 U.S.C. 1334, 1353), the Secretary of the Interior can take Federal royalty oil in kind, in lieu of royalty payment, and sell it to ''eligible refiners'' for use in their refineries. The sale of royalty oil from Federal leases by the United States to eligible refiners is governed by the regulations at 30 CFR 208, effective December 1, 1987 (52 FR 41908, 10/30/1987).

An ''eligible refiner,'' as defined at 30 CFR 208.2, means a refiner of crude oil meeting the following criteria to purchase royalty oil:

(1) For the purchase of royalty oil from onshore leases, it means a refiner that has an operating refinery and qualifies as a small and independent refiner as those terms are defined below:

• The term ''independent refiner'' means a refiner who (a) obtained, directly or indirectly more than 70 percent of his refinery input of domestic crude oil (or 70 percent of his refinery input of domestic and imported crude oil) from producers who do not control, are not controlled by, and are not under common control with, such refiner for the calendar quarter immediately preceding the date of the applicable ''Notice of Availability of Royalty Oil,'' and (b) marketed or distributed in such quarter and continues to market and distribute a substantial volume of gasoline refined by him through branded independent marketers or non-branded independent marketers.

• The term ''small refiner'' means a refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day.

Crude oil received in exchange for the refiner's own production is considered to be part of that refiner's own production for purposes of this section.

(2) For the purchase of royalty oil from offshore leases, it means a refiner that has an operating refinery and qualifies as a small business enterprise under the rules of the Small Business Administration (SBA) (13 CFR Part 121) as updated in **Federal Register** Notice (68 FR 15047, 03/28/2003). The SBA standard for a small business within the Petroleum Refining Industry is a concern with a total Operable Atmospheric Crude Oil Distillation Capacity of less than or equal to 125,000 barrels per calendar day, and that has no more than 1,500 employees. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or throughput.

The regulation at 30 CFR 208.4(a) governs the Determination of Need process and states that:

> The Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. The Secretary will review these items and will determine whether eligible refiners have access to adequate supplies of crude oil and whether such oil is available to eligible refiners at equitable prices. Such determinations may be made on a regional basis * * *.

In accordance with its practice of conducting periodic reviews of market trends and conditions, MMS believes that undertaking another Determination of Need will be beneficial in formulating any decision to hold future royalty oil sales to eligible refiners.

Background: The RIK eligible refiner program has been an important source of crude oil for these refiners in the past. Currently, there are six eligible refiner RIK contracts (involving Gulf of Mexico and Pacific Region offshore leases).

In 1997, MMS undertook an examination of the eligible refiner RIK program and determined that a ''proactive, structured, and documented methodology'' should be used to conduct future RIK Determinations of Need. The MMS performed a full analysis in 1999 and an update of that analysis in 2001. These analyses supported the continuation of the program, and each was followed by subsequent RIK sales to eligible refiners.

More recently, MMS has expanded the percentage of the oil royalties it takes in kind (apart from the eligible refiner program) to improve the efficiency and effectiveness of collecting and distributing royalties. In doing so, it has improved the administration of its RIK programs to better interface with standard industry practices. These improvements include:

• Changing the way we conduct our operations by implementing logical

business practices in the areas of administrative fees, transportation allowances, counterparty risk management, operator delivery requirements, resolution of delivery imbalances, and gravity bank adjustments; and

• Providing greater specificity and certainty with regard to RIK contract language, especially with regard to provisions addressing the valuation of RIK oil for billing purposes.

Additionally, on November 13, 2001, President Bush announced an initiative to fill the remaining capacity of the Strategic Petroleum Reserve (SPR) with crude oil originating from royalties taken in kind. Royalty oil volumes from offshore Gulf of Mexico Federal leases have largely been dedicated to this effort, although about 22 percent of the Federal oil share from these leases is still currently being purchased under RIK eligible refiner sales. The MMS is taking approximately 90 percent of its royalty oil share in kind from Federal offshore California leases. This oil is also purchased under eligible refiner sales.

Potential respondents should also note that the mere conduct of a Determination of Need in no way presupposes that there will or will not be subsequent eligible refiner RIK sales. A Determination of Need is a logical first step in identifying general marketplace conditions. However, any decision to conduct additional RIK sales will necessarily be predicated on the regulatory criteria of ''access'' and ''equity''—*i.e.*, whether a significant number of refiners have limited or no access to the marketplace and/or have experienced difficulty in negotiating a fair price for feeder stocks.

Information Requested: To assist MMS in completing a Determination of Need, please respond in writing to the following questions:

(1) Indicate your perspective as it relates to the domestic crude oil market: Small/Independent Refiner.
Large Refiner.
Oil Producer.
Oil Transporter.
Oil Marketer.
Other (please specify).

(2) Describe your experience with the domestic crude oil market and your perception of the need for the eligible refiner program.

(3) What is your perception of whether a benefit exists to conducting separate sales for onshore and offshore Federal lease crude?

(4) Under the sets of criteria outlined above, are you an eligible refiner of offshore lease oil, onshore lease oil, or both?

If you answered yes to any of the categories in the previous question, please address the questions that follow. (If you have multiple refineries, please address questions 1 through 5 for each refinery).

(1) For your immediate region or geographic area of operation, how would you characterize the general availability of crude oil?

(2) Is your refinery operating at full or near-full capacity in both summer and winter? If not, why not?

(3) What are the slate of refined products and their volumes from your refinery over each of the past 12 months?

(4) What percentage of onshore versus offshore crude oil volumes are currently being run through your refinery?

(5) What type of crude is desired to sustain your mix of refined products (*e.g.*, Wyoming Sweet, Wyoming Sour, Light Louisiana Sweet, etc.)?

(6) Have you been denied access to crude oil supplies in the past 18 months? What was the basis for the denial? For example, was the denial attributable to unavailability of desired crude, a lack of access to the transportation pipeline, or other reasons? Please provide documentation supporting any claim of denial.

(7) Do you use exchange agreements? Why?

(8) Are the feeder stocks you purchase, priced above market values for your geographic area? In other words, do you pay a bonus or premium because of your status as a small and/or independent refiner? Please identify, by crude oil type, what you pay on the average per barrel of oil.

(9) Have you previously participated in the Federal royalty oil program? If a prior program participant, why did you leave the program? How would you now benefit from receiving Federal royalty oil?

(10) Do you currently provide refined products (heating oil, jet fuel, etc.) to a U.S. military base or Federal installation? If so, identify the recipient facility and how long you have been supplying refined products.

(11) Do you anticipate any near term developments that would change your access to necessary supplies of crude oil at equitable prices?

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires us to inform you that this information is being collected by MMS under an approved information collection titled Royalty-in-Kind (RIK)—Eligible Refiners, Determination of Need, OMB Control Number 1010–0119. All correspondence, records, or information received in response to this Notice, and specifically in response to the questions listed above, are subject to disclosure under the Freedom of Information Act (FOIA). All information provided will be made public unless the respondent identifies which portions are proprietary. Please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data. Proprietary information is protected by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), FOIA (5 U.S.C. 552 (b)(4), the Indian Minerals Development Act of 1982 (25 U.S.C. 2103), and Department regulations (43 CFR 2). 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. Public reporting burden is estimated to be 4 hours per response. Comments on the accuracy of this burden estimate or suggestions on reducing this burden should be directed to the Information Collection Clearance Officer, MMS, MS–4230, 1849 C Street, NW., Washington, DC 20240.

Dated: July 15, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–20354 Filed 8–8–03; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–469]

In the Matter of Certain Bearings and Packaging Thereof; Notice of Commission Determination To Remand Investigation to the Administrative Law Judge for Further Fact-Finding; Extension of Target Date for Completion of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand the above-referenced investigation to the presiding administrative law judge (ALJ) for further fact-finding. The Commission has also determined to extend the target date in this investigation by six (6) months, *i.e.*, until February 12, 2004.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the Commission's

Order, the public version of the ALJ's initial determination (ID), and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 16, 2002, based on a complaint filed by SKF USA, Inc. (SKF USA) of Norristown, PA against fourteen respondents. 67 FR 18632 (2002). Four respondents remain active in the investigation, with ten respondents having either settled with complainant or been found in default. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain bearings by reason of infringement of registered and common law trademarks, dilution of trademarks, various acts in violation of the Lanham Act, and passing off. A count concerning ''unfair pecuniary benefits'' was dismissed by the Commission on September 23, 2002.

On April 10, 2003, the ALJ issued his final ID on violation and his recommended determination on remedy and bonding. The ALJ found a violation of section 337 by reason of infringement of SKF USA's registered and common law trademarks by each of the four remaining respondents, viz., Bearings Limited, Bohls Bearing and Transmission Service, CST Bearing Company, and McGuire Bearings Company, and recommended the issuance of a general exclusion order and cease and desist orders to the respondents found in violation. All active parties remaining in the investigation, including the Commission investigative attorney, filed petitions for review on April 21, 2003, and replies to the petitions on April 28, 2003.

On May 27, 2003, the Commission determined to review the ID in part and asked the parties to brief several questions relating to the issue of material differences in the context of trademark infringement by gray market goods. 68 FR 32766–7 (June 2, 2002). Responses to the Commission's questions were filed on June 6, 2003, by all parties remaining in the investigation. Replies to the responses were filed by the same parties on June 13, 2003. Having examined the parties' submissions and the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission determined to remand the investigation to the ALJ for further fact-finding concerning the material differences between complainant's and respondents' bearings. In order to allow sufficient time for the further fact-finding, the Commission extended the target date for completion of the investigation by six month, *i.e.*, until February 12, 2004.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.45 and 210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.45, 210.51).

Issued: August 6, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–20386 Filed 8–8–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–431 (Final)]

Drams and Dram Modules From Korea

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Korea of dynamic random access memory semiconductors (DRAMs) and DRAM modules, provided for in subheadings 8473.30.10 and 8542.21.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of Korea.

Background

The Commission instituted this investigation effective November 1, 2002, following receipt of a petition filed with the Commission and Commerce by Micron Technology, Inc., Boise, ID. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of DRAMs and DRAM modules from Korea were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 16, 2003 (68 FR 18671). The hearing was held in Washington, DC, on June 24, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 4, 2003. The views of the Commission are contained in USITC Publication 3617 (August 2003), entitled *DRAMs and DRAM Modules from Korea: Investigation No. 701–TA–431 (Final).*

Issued: August 4, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–20365 Filed 8–8–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Marcia E. Miller did not participate in this investigation.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1048–1053 (Preliminary)]

Electrolytic Manganese Dioxide From Australia, China, Greece, Ireland, Japan, and South Africa

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–1048–1053 (Preliminary) under section 733(a) of the Tariff Act of 1930

(19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Australia, China, Greece, Ireland, Japan, and South Africa of electrolytic manganese dioxide, provided for in subheading 2820.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by September 15, 2003. The Commission's views are due at Commerce within five business days thereafter, or by September 22, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 31, 2003.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on July 31, 2003 by Kerr-McGee Chemical, LLC, Oklahoma City, OK.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 21, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202–708–5408) not later than August 18, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 26, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Dated: August 5, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–20367 Filed 8–8–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1012 (Final)]

Certain Frozen Fish Fillets From Vietnam

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Vietnam of certain frozen fish fillets, provided for in subheading 0304.20.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV). Concurrently, the Commission finds that critical circumstances do not exist with respect to imports of the subject product from Vietnam.

Background

The Commission instituted this investigation effective June 28, 2002, following receipt of a petition filed with the Commission and Commerce on behalf of the Catfish Farmers of America—a trade association of U.S.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

catfish farmers and processors—and by individual U.S. catfish processors. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of the subject product from Vietnam were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 12, 2003 (68 FR 7131). The hearing was held in Washington, DC, on June 17, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 6, 2003. The views of the Commission are contained in USITC Publication 3617 (August 2003), entitled Certain Frozen Fish Fillets from Vietnam: Investigation No. 731–TA–1012 (Final).

Issued: August 6, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–20385 Filed 8–8–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1043–1045 (Preliminary)]

Polyethylene Retail Carrier Bags From China, Malaysia, and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China, Malaysia, and Thailand of polyethylene retail carrier bags, provided for in subheading 3923.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 20, 2003, a petition was filed with the Commission and Commerce by the Polyethylene Retail Carrier Bag Committee, an ad hoc coalition of U.S. polyethylene retail carrier bag producers, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of polyethylene retail carrier bags from China, Malaysia, and Thailand. Accordingly, effective June 20, 2003, the Commission instituted antidumping duty investigations Nos. 731–TA–1043–1045 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 27, 2003 (68 FR 38385). The conference was held in Washington, DC, on July 11, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 4, 2003. The views of the Commission are contained in USITC Publication 3618 (August 2003), entitled Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand: Investigations Nos. 731–TA–1043–1045 (Preliminary).

Issued: August 5, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–20366 Filed 8–8–03; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–485]

In the Matter of Certain Truck Bed Ramps and Components Thereof; Notice of Commission Decision Not to Review an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930 and Terminating the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') finding no violation of section 337 of the Tariff Act of 1930 and terminating the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice adn Procedure (19 CFR 207.2(f)).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 24, 2003, based on a complaint filed by Charles D. Walkden (''Walkden'') of Homer, Alaska. 68 FR 3550 (2003). The complaint, as amended, alleged violations of section 337 in the importation, sale for importation, and sale within the United States after importation of certain truck bed ramps and components thereof that infringe claim 1 of U.S. Patent No. 5,795,125 (''the '125 patent''). The Commission named as respondents ETEC of Saskatoon, SK, Canada; Textron Inc. (''Textron'') of Providence, Rhode Island; VIP Distributing of Anchorage, Alaska; Southwest Distributing Co. of Clinton, Oklahoma; and Hamilton Equipment Inc. of Ephrata, Pennsylvania. *Id.* Textron was subsequently terminated from the investigation on the basis of a consent order.

On June 2, 2003, the Commission investigative attorney (''IA'') moved pursuant to Commission rule 210.15(a) for summary determination of non-infringement. On July 10, 2003, the ALJ issued an ID granting the IA's motion. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: August 6, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–20384 Filed 8–8–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 015–2003]

Privacy Act of 1974; Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department proposes to modify the following Privacy Act systems of records:

Central Civil Rights Division Index File and Associated Records, JUSTICE/CRT–001 (previously published on February 20, 1998, at 63 FR 8659);

Civil Rights Case Load Evaluation System—Time Reporting System, JUSTICE/CRT–003 (previously published on October 17, 1988, at 53 FR 40510);

Registry of Names of Interested Persons Desiring Notifications of Submissions Under Section 5 of the Voting Rights Act, JUSTICE/CRT–004 (previously published on October 17, 1988, at 53 FR 40511);

Files on Employment Civil Rights Matters from Persons Outside of the Department of Justice, JUSTICE/CRT–007 (previously published on October 17, 1988, at 53 FR 40512); and Civil Rights Division Travel Reports, JUSTICE/CRT–009 (previously published on October 17, 1988, at 53 FR 40514).

The Department is publishing modifications to the above systems of records. This notice includes some major changes such as adding new routine uses. Also, the Department made other non-substantive changes in all the above systems to provide clarification, such as to correct typographical errors, to provide updated addresses, to update information on particular statutes, to clarify existing routine uses, to add data elements omitted from previous notices, and to reflect nomenclature changes. The proposed rule for the Privacy Act exemptions is also being updated and is published in today's **Federal Register**.

First, in the Central Civil Rights Division Index File and Associated Records system, CRT–001, the Department proposes to allow records which may disclose a violation or potential violations of law to be referred to the appropriate authority charged with the responsibility for investigation, enforcing or prosecuting such violation. Two other routine use disclosures permit the disclosure of information regarding the progress and results of investigations to contractors, experts, students, consultants, mediators, negotiators, and other persons performing work or on assignment to the Federal Government. Another routine use will permit the disclosure of information to former employees of the Department for matters in which they were involved. In addition, a revised routine use will permit disclosure of health care-related information obtained during health care-related investigations.

Second, the Department proposes to add five routine use disclosures to Civil Rights Interactive Case Management System, CRT–003. The first routine use allows records which may disclose a violation or potential violations of law to be referred to the appropriate authority charged with the responsibility for investigation, enforcing or prosecuting such violation. Two routine uses are similar to those above: To permit the disclosure of information regarding the progress and results of investigations to contractors, experts, students, consultants, and other persons performing work or on assignment to the Federal Government; and to permit the disclosure of information to former employees of the Department for matters in which they were involved. One routine use will permit disclosure to complainants and victims to provide information about the progress and/or results of an investigation or case. Further, information may be disclosed to the media under certain circumstances unless it would constitute an unwarranted invasion of personal privacy.

Third, the Department proposes to add three routine use disclosures to Registry of Names of Interested Persons Desiring Notifications of Submissions Under Section 5 of the Voting Rights Act, CRT–004. Two routine uses are similar to that above: To permit the disclosure of information regarding the progress and results of investigations to contractors, experts, students, consultants, and other persons performing work or on assignment to the Federal Government; and to permit the disclosure of information to former employees of the Department for matters in which they were involved. Another routine use will allow records which may disclose a violation or potential violations of law to be referred to the appropriate authority charged with the responsibility for investigation, enforcing or prosecuting such violation.

Fourth, the Department proposes to add three routine use disclosures to Files on Employment Civil Rights Matters from Persons Outside of the Department of Justice, CRT–007. This routine use will permit the disclosure to complainants and victims to provide information about the progress or results of an investigation or case. Two routine uses are identical to that above: To permit the disclosure of information regarding the progress and results of investigations to contractors, experts, students, consultants, and other persons performing work or on assignment to the Federal Government; and to permit the disclosure of information to former employees of the Department for matters in which they were involved. One routine use will permit disclosure to complainants and victims to provide information about the progress or results of an investigation or case.

Fifth, the Department proposes to add two identical routine uses as those above, for disclosure to contractors and former employees, in Civil Rights Division Travel Reports, CRT–009. The other routine use will allow records which may disclose a violation or potential violations of law to be referred to the appropriate authority charged with the responsibility for investigation,

enforcing or prosecuting such violation or law.

In addition, the Civil Rights Division has one system of records, CRT–002, Files of Application for the Position of Attorney with the Civil Rights Division, which is now covered by two government wide systems of records of the Office of Personnel Management (OPM): OPM/GOVT–1, General Personnel Records; and OPM/GOVT–5, Recruiting, Examining and Placement Records (both published on April 27, 2000, at 65 FR 24732–24753). Accordingly, these government wide system notices replace, and the Department hereby removes, on the effective date of this notice, the following notice previously published by an individual Department of Justice component:

Files of Application for the Position of Attorney with the Civil Rights Division, JUSTICE/CRT–002 (previously published on December 17, 1985, at 50 FR 51482).

Finally, the Office of Special Counsel for Immigration Related Unfair Employment Practices was merged into the Civil Rights Division, and its two remaining systems of records are being incorporated into the Civil Rights Division's systems of records. Accordingly, this system notice replaces, and the Department hereby removes, on the effective date of this notice, the following notices previously published by individual Department of Justice components:

Office of Special Counsel, ''Central Index File and Associated Records,'' OSC–001 (previously published on October 17, 1988, at 53 FR 40531); and

Office of Special Counsel, ''Special Counsel for Immigration Related Unfair Employment Practices Travel Reports,'' OSC–003 (previously published on September 15, 1988 at 53 FR 35926).

The Office of Special Counsel's systems of records, OSC–001 and OSC–003, were incorporated into the Civil Rights Division's systems of records, CRT–001 and CRT–009, respectively.

The modified systems of records are printed below.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility of the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by September 10, 2003. The public, OMB and the Congress are invited to submit comments to: Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1331 Pennsylvania Ave., NW., Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress.

Dated: July 24, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/CRT–001

SYSTEM NAME:

Central Civil Rights Division Index File and Associated Records, CRT–001.

SYSTEM LOCATION:

United States Department of Justice, Civil Rights Division (CRT), 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include: Subjects of investigations, victims, potential witnesses, individuals of Japanese ancestry who were eligible, or potentially eligible, for restitution benefits as a result of their evacuation, relocation, or internment during World War II, and representatives on behalf of individuals and other correspondents on subjects directed or referred to CRT or other persons or organizations referred to CRT in potential or actual cases and matters of concern to CRT, and CRT employees who handle complaints, cases or matters of concern to CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system consist of case files, matters, memoranda, correspondence, studies, and reports relating to enforcement of civil rights laws and other various duties of the Civil Rights Division. The delegated legal duties and responsibilities of each section are described in detail at the Civil Rights Division Web page: *http://www.usdoj.gov/crt/crt-home.html*. In addition to the sections, the Civil Rights Division maintains records related to the duties of the former Office of Redress Administration pertaining to the identification, location and authorization for restitution payments to eligible individuals of Japanese ancestry who were evacuated, relocated or interned during World War II. These restitution payments were authorized by section 105 of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b). Finally, the names of some individuals, *e.g.*, witnesses, may not yet be on the central indices and may be obtained by direct access to the file jackets. Such file jackets are located within the respective sections of CRT according to the legal subject matter assigned to each CRT section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in the system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to CRT under the provisions of 28 CFR 0.50, 0.51.

PURPOSES:

The purposes of this system are to assist all the sections within the Division in maintaining names of Division employees and their case investigation assignments, names of defendants or investigation targets, victims, witnesses or potential witnesses, or other persons or organizations as they relate to potential or actual cases, investigations, and matters of concern to CRT. Other purposes are to assist employees and officials within the Division to review and make decisions in the course of investigations and legal proceedings, to assist the Division in preparing budget requests, to respond to inquiries from outside the Department, and to carry out other authorized Department functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such records as follows:

(1) In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, foreign, or Tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(2) In the course of the administration by CRT of a federally mandated program, or the investigation or litigation of a case or matter, a record may be disseminated to a Federal, State or local agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information or has the expertise in an official or technical capacity to assist in the administration of such program or to analyze information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such assistance, information or expert analysis, or to obtain the

cooperation of a prospective witness or informant;

(3) A record relating to a case or matter, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation;

(4) A record relating to a case or matter may be disseminated to an actual or potential party to litigation or the party's attorney (a) for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or (b) in informal discovery proceedings;

(5) A record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any determination that has been made;

(6) A record relating to a person held in custody or probation during a criminal proceeding or after conviction may be disseminated to any agency or individual having responsibility for the maintenance, supervision or release of such person;

(7) A record may be disseminated to the United States Commission on Civil Rights in response to its request and pursuant to 42 U.S.C. 1975d;

(8) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(9) A record may be disseminated to mediators, negotiators or other persons engaged in efforts to resolve or settle cases or matters pending in the Division as is necessary to enable them to perform their assigned duties;

(10) A record may be disseminated to complainants and victims to the extent necessary to provide such persons with information and explanations concerning the progress or results of the investigation or case arising from the matters of which the complainants or victims complained or of which they were a victim;

(11) Information relating to health care fraud may be disclosed to private health plans, or associations of private health plans, health insurers, or associations of health insurers, to promote the coordination of efforts to prevent, detect, investigate, and prosecute health care fraud; to assist efforts by victims of health care fraud to obtain restitution; to enable private health plans to participate in local, regional, and national health care fraud task force activities; and to assist tribunals, which have jurisdiction over claims against private health plans for allegedly improper disclosures to the Department of Justice of information concerning suspected health care fraud, in determining whether the private health plan qualifies for statutory immunity from civil liability as provided by Section 201 of the Health Insurance Portability and Accountability Act of 1998, codified at 42 U.S.C. 1320a–7c(a)(3)(B)(iii);

(12) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(13) Information may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents who are subjects of CRT records;

(14) A record may be disclosed as a routine use to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(15) To a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on index cards, in file jackets, and on computer disks or tapes.

RETRIEVABILITY:

Records are retrieved by the names of individuals or by case numbers assigned to certain cases being investigated by the Department.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Department security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer to access the stored information. However, a section may decide to allow its employees access to the system in order to perform their official duties.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When no longer needed on an active basis, the paper files are transferred to the Federal Records Center, Suitland, Maryland and some records are transferred to computer tape and stored in accordance with Department security regulations for systems of records. Final disposition is in accordance with records retention schedules approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Administrative Management Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001.

NOTIFICATION PROCEDURE:

Part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2) and (k)(2). Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked ''Privacy Access Request.'' Include in the request the full name of the individual, his or her current address, date and place of birth, notarized signature or dated signature submitted under penalty of perjury (28 CFR 16.41(d)), the subject of the case or matter as described under ''Categories of records in the system,'' and any other information which is known and may be of assistance in locating the record, such as the name of the civil rights related case or matter involved, where and when it occurred and the name of the judicial district involved. The requester will also provide a return address for

transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information retrievable in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system may be an agency or person who has or offers information related to the law enforcement responsibilities and/or other statutorily-mandated duties of CRT.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted parts of this system from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**. These exemptions apply only to the extent that information in a record pertaining to a particular individual relates to an official federal investigation and/or law enforcement matter. Those files indexed under an individual's name which concern only the administrative management of restitution payments under section 105 of the Civil Liberties Act of 1988 are not being exempted pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

JUSTICE/CRT–003

SYSTEM NAME:

Civil Rights Interactive Case Management System (ICM).

SYSTEM LOCATION:

United States Department of Justice, Civil Rights Division (CRT), 950 Constitution Ave., NW., Washington, DC 20530–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include: Complainants, victims, defendants, parties, experts, mediators, Assistant U.S. Attorneys, judges, and individuals or representatives on behalf of individuals in potential or actual cases and matters of concern under jurisdiction of the Civil Rights Division; and CRT employees, including attorneys, paralegals, and professional staff, who handle complaints, cases or matters of concern to CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records in this system pertain to a broad variety of cases and matters under the jurisdiction of the CRT relating to disability rights, education, employment, housing, special litigation, voting, criminal, enforcement, and other civil rights laws or matters;

(2) Summary information of these cases or matters is maintained in the system including such information as names of principal parties or subjects, proper case name, case numbers, judicial district, assignments, alleged violation, section of CRT responsible for the matter, and case status, ranging from the preliminary development stage, through investigation, litigation, compliance, appeal, conviction or closure; and

(3) The ICM also has a time reporting system that allows the CRT to capture, analyze and report the professional time attorneys, paralegals and other employees of the Division spend on investigation and case related tasks.

PURPOSE(S):

The ICM is designed to track, count and measure all investigations and cases throughout their life cycle. The CRT uses reports generated from this system to provide a profile for each section's activities and to furnish management with a global perspective to the CRT workload. The ICM also has a time reporting system that allows the CRT to capture, analyze and report the level of effort attorneys, paralegals, and professional staff spend on investigation and case related tasks. One purpose of this system is to assist employees and officials of the Department to keep track of resources and professional time devoted to individual assignments to matters and broad categories of cases. Another purpose is to assist the CRT in preparing budget requests and other reports which may be submitted to the Attorney General or to Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such records as follows:

(1) A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation;

(2) In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, foreign, or Tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(3) A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney or authorized representative for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or in informal discovery proceedings;

(4) A record may be disseminated to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(5) A record may be disseminated to complainants and victims to the extent necessary to provide such persons with information and explanations concerning the progress or results of the investigation or case arising from the matters of which the complainants or victims complained or of which they were a victim;

(6) A record may be disseminated to a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(7) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined

that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(8) Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents who are subjects of CRT records; and

(9) A record from the system or records may be disclosed to National Archives and Records Administration (NARA) and General Services Administration (GSA) for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically in the ICM computerized information system.

RETRIEVABILITY:

Information is retrieved by name or other identifier assigned to an individual.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental security regulations for systems or records. Access to the records is limited to those employees whose official duties require such access in order to perform their duties.

RETENTION AND DISPOSAL:

Records are maintained in the system while current and required for official Government use. When no longer needed on an active basis, the records are stored in accordance with Departmental security regulations for systems of records. The disposition schedule is pending approval at NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Administrative Management Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530–0001.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager listed above.

RECORD ACCESS PROCEDURE:

A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked ''Privacy Access Request.'' Include in the request the full name of the individual involved, his or her current address, date and place of birth, and notarized signature or dated signature submitted under penalty of perjury (28 CFR 16.41(d)), and any other information which is known and may be of assistance in locating the record. The requester should provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend their records should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information on time-allocation is provided by CRT attorneys, paralegals and professional staff who handle complaints, cases or matters of concern to the CRT. Sources of information contained in this system are those records reflecting all cases or matters under consideration by CRT.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/CRT–004

SYSTEM NAME:

Registry of Names of Interested Persons Desiring Notification of Submissions under Section 5 of the Voting Rights Act.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division (CRT), 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have requested that the Attorney General send them notice of submissions under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Registry contains the name, address and telephone numbers of interested parties, and, where appropriate, the voting area or areas with respect to which notification was requested by such persons.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 FR 877 (1981) codified in 28 CFR part 51, 42 U.S.C. 1973c, 5 U.S.C. 301 and 28 U.S.C. 509, 510.

PURPOSE(S):

The purpose is to maintain records in a Registry to identify persons interested in receiving notification of submissions under Section 5 of the Voting Rights Act and to comply with their requests. Section 5, which applies to several states and some counties, requires that any change with respect to voting that a specially covered jurisdiction makes is legally unenforceable unless and until the jurisdiction obtains from the Federal court in the District of Columbia or from the Attorney General a determination that the change is not discriminatory on account of race, color, or membership in a language minority group. If the jurisdiction is unable to prove the absence of discrimination, the Attorney General objects to the change, and it remains legally unenforceable. Further, the Registry may be used to notify the persons listed therein of any proposed changes in the ''Procedures for the Administration of Section 5 of the Voting Rights Act of 1965,'' 46 FR 870 (1981), codified in 28 CFR part 51, and to solicit their comments with respect to any such proposed changes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such records as follows:

(1) A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation;

(2) A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney or authorized representative for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in informal discovery proceedings.

(3) A record may be disseminated to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(4) A record may be disseminated to complainants and victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from

the matters of which the complainants or victims complained or of which they were a victim;

(5) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(6) Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents who are subjects of CRT records;

(7) A record from a system of records may be disclosed as a routine use to National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(8) A record may be disclosed to a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility; and

(9) In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Names are stored in a card file system, and an automated addresser.

RETRIEVABILITY:

Records in this system are retrievable by the names of interested persons or organizations.

SAFEGUARDS:

Information in the system is safeguarded in accordance with Departmental rules and procedures governing access, production and disclosure of any materials contained in its official files.

RETENTION AND DISPOSAL:

An individual or organizational name is retained in the Registry until such time as that person or organization requests that the name be deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530–0001.

NOTIFICATION PROCEDURE:

Address inquiries to: Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530–0001.

RECORD ACCESS PROCEDURES:

This system contains no information about any individual other than as described in Categories of Records above. Persons whose names appear on the Registry may have access thereto or have their names and other information pertaining to them deleted or modified upon a request of the same nature as indicated in 46 FR 877 (1981), codified in 28 CFR part 51.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Sources of information in the Registry are those persons or organizations whose names appear therein by virtue of their having requested inclusion in the Registry pursuant to 46 FR 877 (1981), codified in 28 CFR 51.32.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/CRT–007

SYSTEM NAME:

Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division (CRT), 950 Pennsylvania Avenue NW., Washington, DC 20530–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons seeking employment or employed by a state or a political subdivision of a state who have filed charges alleging discrimination in employment with the Equal Employment Opportunity Commission (hereinafter EEOC) which have resulted in a determination by EEOC that there is probable cause to believe that such discrimination has occurred, and attempts by EEOC at conciliation have failed.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain copies of charges filed with EEOC, copies of EEOC's ''determination'' letters, letters of transmittal from and to EEOC, analyses or evaluations summarizing the charge and other materials in the EEOC file, internal memoranda, attorney notes, and copies of ''right to sue'' letters issued by CRT. The system may also contain charges related to allegations of employment discrimination by public employers filed by individual complainants which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e–5(f) (1) or 5(f) (2), or to allegations of a pattern or practice of violations of the Equal Employment Opportunity Act by a public employer which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e–6. If the Department has determined to initiate an investigation or litigate a matter referred by EEOC the records pertaining to that matter are not contained in the system. Such records and their routine uses are described under the notice for the system named: Central CRT Index File and Associated Records/CRT–001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

PURPOSE(S):

One purpose of this system is to assist employees and officials of the Department to make decisions regarding the issuance of right to sue letters or make decisions regarding prosecutions of alleged instances of employment discrimination. Another purpose is to assist the Division in preparing budget requests, statistical reports, and other internal functions of the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such records as follows:

(1) A record relating to this system, or any facts derived therefrom may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is

authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation;

(2) A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney or authorized representative for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in informal discovery proceedings;

(3) A record may be disseminated to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(4) A record may be disseminated to complainants and victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which the complainants or victims complained or of which they were a victim;

(5) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(6) Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents who are subjects of CRT records;

(7) A record from a system of records may be disclosed as a routine use to National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; and

(8) A record may be disclosed to a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the systems is stored on index cards, in file jackets, and in computer disks which are maintained by the Employment Litigation Section, Civil Rights Division.

RETRIEVABILITY:

Information is retrieved primarily by using the appropriate Department of Justice file number, or the name of the charging party, or the state in which the alleged discrimination occurred or through other logical queries to the computer based system.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental security regulations for systems of records. Staff members who are assigned a specific identification code will be able to use the computer or to access the stored information in order to perform their official duties.

RETENTION AND DISPOSAL:

If the Department determines not to prosecute a matter referred by the EEOC, the records transmitted with the referral are returned to the EEOC. Other records in the system are kept for routine use by the Department and when no longer needed are sent to the Federal Records Center or are destroyed. Records are retained and disposed of in accordance with item 25 of the General Records Schedule 1 as approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530–0001.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked ''Privacy Access Request.'' The request should indicate the state where the alleged employment discrimination took place and the employer to which the charge was related. The requester should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature or dated signature submitted under penalty of perjury (28 CFR 16.41(d)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Disclosure of part of the material in this system may be prohibited by 42 U.S.C. 2000e-5(b), 42 U.S.C. 2000e-8(e) and 44 U.S.C. 3510(b). Part of this system is exempted from access and contest under 5 U.S.C. 552a(k) (2).

RECORD SOURCE CATEGORIES:

Sources of information in this system are charging parties, information compiled and maintained by EEOC, and employees and officials of the Department of Justice responsible for the disposition of the referral request.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted the system from 5 U.S.C. 552a (d)(1), (2), (3), and (4) of the Privacy Act pursuant to 5 U.S.C. 552a (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e), and have been published in the **Federal Register**.

JUSTICE/CRT–009

SYSTEM NAME:

Civil Rights Division Travel Reports, CRT–009.

SYSTEM LOCATION:

United States Department of Justice, Civil Rights Division (CRT), 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have filed travel authorization forms or travel voucher forms for official travel on behalf of CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Division's filing system contains information concerning travel expenditures which were recorded on travel authorization forms and travel voucher forms by CRT employees or other persons authorized to travel for CRT and submitted to the Budget and Finance Branch of CRT.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

PURPOSE(S):

One purpose of this system is to assist employees and officials of the Division to measure and track expenditures within the Division. Other purposes are to assist the Division in preparing reports within various sections to control and review expenditures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such records as follows:

(1) A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which CRT is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by CRT to be arguably relevant to the litigation;

(2) A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney or authorized representative for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in informal discovery proceedings;

(3) A record may be disseminated to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(4) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(5) Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents who are subjects of CRT records;

(6) A record from a system of records may be disclosed as a routine use to National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(7) A record may be disclosed to a former employee of the Department for purposes of: Responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility; and

(8) In the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law-criminal, civil or regulatory in nature-the relevant records may be referred to the appropriate Federal, State, local, foreign, or Tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in hard copy and electronic form.

RETRIEVABILITY:

Records in this system are retrieved by the names of those individuals identified under the caption ''Categories of individuals covered by the system.''

SAFEGUARDS:

Information in the system is unclassified. However, the records are protected in accordance with applicable Department security regulations for systems of records. Records are stored in locked cabinets and access to the computer is limited to those personnel who have a need for access to perform their official duties.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When no longer needed on an active basis, the records are transferred to computer tape and stored in accordance with Departmental security regulations for systems of records. Final disposition will be in accordance with records retirement or destruction as scheduled by NARA in General Records Schedule 9.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Administrative Management Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530–0001.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

Requests by former employees for access to records in this system may be made in writing with the envelope and letter clearly marked ''Privacy Act Request.'' The request should clearly state the dates on which official travel was taken. The requestor should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature or dated signature submitted under penalty of perjury (28 CFR 16.41(d)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager. Present employees may request access by contacting the System Manager directly.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are CRT employees and other authorized persons who file travel authorization and travel voucher forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–20342 Filed 8–8–03; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Explosive Materials and Blasting Units

ACTION: Notice.

SUMMARY: The Department of Labor, 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 requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to 30 CFR 57.22606(a); Explosive Materials and Blasting Units.

DATES: Submit comments on or before October 10, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *Tarr-Jane@Msha.Gov.* Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet e-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

MSHA evaluates and approves explosive materials and blasting units as permissible for use in the mining industry. However, since there are no permissible explosives or blasting units available that have adequate blasting capacity for some metal and nonmetal gassy mines, Standard 57.22606(a) was promulgated to provide procedures for mine operators to follow for the use of non-approved explosive materials and blasting units. Mine operators must notify MSHA in writing, of all non-approved explosive materials and blasting units to be used prior to their use. MSHA evaluates the non-approved explosive materials and determines if they are safe for blasting in a potentially gassy environment.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

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

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and **Federal Register** Documents.

III. Current Actions

MSHA uses the information to determine that the explosives and blasting procedures to be used in a gassy underground mine are safe. Federal inspectors use the notification to ensure that safe procedures are followed.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Explosive Materials and Blasting Units.

OMB Number: 1219–0095.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 2.

Average Time Per Respondent: 1 hour.

Total Burden Hours: 2 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

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 at Arlington, Virginia, this first day of August 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–20361 Filed 8–8–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection (Pertains to Surface Coal Mines)

ACTION: Notice.

SUMMARY: The Department of Labor, 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 requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 77.1713; Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection.

DATES: Submit comments on or before October 10, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *Tarr-Jane@Msha.Gov.* Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet e-mail),

(202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 77.1713 requires coal mine operators to conduct examinations of each active working area of surface mines, active surface installations at these mines, and preparation plants not associated with underground coal mines for hazardous conditions during each shift. A report of hazardous conditions detected must be entered into a record book along with a description of any corrective actions taken.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

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

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

Under 30 CFR 77.1713, coal mine operators to conduct examinations of each active working area of surface mines, active surface installations at these mines, and preparation plants not associated with underground coal mines for hazardous conditions during each shift. A report of hazardous conditions detected must be entered into a record book along with a description of any corrective actions taken.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection.

OMB Number: 1219–0083.

Recordkeeping: A report of hazardous conditions detected must be entered into a record book along with a description of any corrective actions taken.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 1,514.

Responses: 513,246.

Average Time Per Respondent: 1.5 hours.

Total Burden Hours: 769,869 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

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 at Arlington, Virginia, this first day of August 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–20362 Filed 8–8–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Main Fan Operation and Inspection

ACTION: Notice.

SUMMARY: The Department of Labor, 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 requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR 57.22204, Main Fan Operation.

DATES: Submit comments on or before October 10, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *Tarr-Jane@Msha.Gov.* Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet e-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30, CFR 57.22204, which is applicable only to specific underground mines that are categorized as gassy requires main fans to have pressure-recording systems. Main fans are to be inspected daily while operating if persons are underground, and certification of the inspection is to be made by signature and date. When accumulations of explosive gases such as methane are not swept from the mine by the main fans, they may reasonably be expected to contact an ignition source. The results are usually disastrous and multiple fatalities may be expected to occur. The main fan requirements of this standard are significantly more stringent than those imposed on non-gassy mines.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

Information collected through the pressure recordings is used by the mine operator and MSHA for maintaining a constant vigil on mine ventilation, and to ensure that unsafe conditions are identified early and corrected. Technical consultants may occasionally review the information when solving problems.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Main Fan Operation and Inspection.

OMB Number: 1219–0030.

Recordkeeping: Section 57.22204 requires that main fans are to be inspected daily while operating if persons are underground, and certification of the inspection is to be made by signature and date. Certifications and pressure recordings are to be kept for one year and made available to authorized representatives of the Secretary.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 7.

Total Responses: 3,465.

Average Time Per Response: 30 minutes.

Total Burden Hours: 1,733 hours.

Total Burden Cost (capital/startup): $735.

Total Burden Cost (operating/maintaining): $735.

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 at Arlington, Virginia, this first day of August 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–20363 Filed 8–8–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for an Extension of a Currently Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 10, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0163.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Privacy of Consumer Financial Information, 12 CFR part 716 and Requirements for Insurance, 12 CFR part 741.

Description: The regulations direct newly chartered and troubled credit unions to provide NCUA with 30 days notice before making a management change. 12 CFR parts 701.14 and 741.205.

Estimated No. of Respondents/Recordkeepers: 10,627.

Estimated Burden Hours Per Response: 45 hours.

Frequency of Response: Recordkeeping and third party disclosure.

Estimated Total Annual Burden Hours: 478,215.

Estimated Total Annual Cost: $ 0.

By the National Credit Union Administration Board on July 30, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–20314 Filed 8–8–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until September 10, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0144.

Form Number: N/A.

Type of Review: Reinstatement , with change, of a previously approved collection for which approval has expired.

Title: Examination Survey.

Description: The survey provides federal credit unions with an opportunity to give NCUA feedback on its examination procedures. NCUA uses the information to evaluate and improve the examination process.

Estimated No. of Respondents/ Recordkeepers: 6,023.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: Reporting and annually.

Estimated Total Annual Burden Hours: 502 hours.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on July 30, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–20315 Filed 8–8–03; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for a Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until September 10, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 518–6489, E-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0121.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Notice of change of Officials and Senior Executive Officers.

Description: The regulations direct newly chartered and troubled credit unions to provide NCUA with 30 days notice before making a management change. 12 CFR parts 701.14 and 741.205.

Estimated No. of Respondents/ Recordkeepers: 589.

Estimated Burden Hours Per Response: 2.0 hours.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 1178.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on July 30, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–20316 Filed 8–8–03; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 17, 2003, the National Science Foundation published a notice in the **Federal Register** of a Waste Management permit application received. A Waste Management permit was issued on August 1, 2003, to the following applicant: Pat Shaw, Quark Expeditions, Inc.; Permit No.: 2004 WM–001.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–20317 Filed 8–8–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 27, 2003, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on August 4, 2003, to: Peter Doran; Permit No. 2004–007.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–20318 Filed 8–8–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580]

Notice of Consideration of Amendment Request for Fansteel, Inc., To Authorize Decommissioning of Its Muskogee, Oklahoma Site, and Opportunity To Provide Comments and To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request to authorize decommissioning, and opportunity to provide comments and/or to request a hearing.

FOR FURTHER INFORMATION CONTACT: J.C. Shepherd, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6712; Fax: (301) 415–5398; and/or by email: *jcs2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to materials license SMB–911 to authorize decommissioning of the Fansteel site near Muskogee, Oklahoma. The license, issued under 10 CFR part 40, authorizes Fansteel to possess up to 400 tons of natural uranium and thorium in any

form. The material at the Muskogee site is in the form of uranium, thorium, radium, and decay-chain products in process equipment and buildings, soil, sludge, and groundwater.

On July 24, 2003, the licensee submitted a request for license amendment to approve the site decommissioning plan (DP) submitted on January 14, 2003, as amended by letter dated May 8, 2003. Fansteel proposes removing the radiological contamination from buildings and equipment, soil, and groundwater to meet the unrestricted release requirements of the Radiological Criteria for License Termination rule (10 CFR part 20, subpart E) (62 FR 39058).

Before the issuance of the amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report, an Environmental Assessment, and in an amendment to License No. SMB–911.

II. Opportunity To Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP, and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this action should be provided to J.C. Shepherd, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6712; Fax: (301) 415–5398; and/or by email: *jcs2@nrc.gov.*

Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in Section II above, pursuant to section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays; or

2. By mail, telegram, or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Services Branch. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Fansteel, Inc., Number One Tantalum Place, North Chicago, IL 60064 Attention: Mr. Gary Tessitore, and;

2. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays, or by mail, addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in section 2.1205(h)

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with section 2.1205(d).

IV. Further Information

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' details with respect to this action, including the decommissioning plan, the application for amendment and supporting documentation, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading–rm.html.* These documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Dated at Rockville, Maryland, this 5th day of August, 2003.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–20377 Filed 8–8–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Emergency Clearance and Review; Comment Request for a Revision of a Currently Approved Collection: Presidential Management Intern Program; Online Application and Resume Builder

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted a request to the Office of Management and Budget for emergency clearance and review of a revision of a currently approved collection for an automated online application and resume builder for the Presidential Management Intern (PMI) Program. Approval of the PMI online application and resume builder is necessary to facilitate the timely registration, nomination, selection and placement of PMI finalists in Federal agencies.

The present OPM Form 1300, PMI Application, consists of a 6-page scan-form in order to be nominated into the program. Graduate students must fill out the form, attach a resume, and submit the form and attachment to their school's nomination official. OPM

received OMB approval last year, with an expiration of 12/31/2003, for this collection of information. In order to meet Government Paperwork Elimination Act (GPEA) requirements of automating government forms by October 2003, OPM is developing an online application and resume builder to substitute for the existing method of collection. Upon OMB approval, the online application and resume builder will replace the present scan-form, and OPM will transfer the form identifier of OPM Form 1300 to the online version. An alternative paper-based application will be made available for those applicants with disabilities and/or inability to access the Internet.

The following significant changes have been made to the application and nomination process: (1) The online application and resume builder will replace the OPM Form 1300 scan-form with an electronic version available through the PMI Web site; (2) the PMI Web site's Program Overview will be updated to reflect the changes needed to complete the online application and resume builder; (3) the online resume builder will be structured similarly to the USAJOBS online resume builder; (4) an accomplishment record containing three short essays has been added to facilitate a first round of assessments for PMI finalists as a prescreening tool; (5) data will be collected from all applicants and not just those nominated by school officials; and (6) students will be required to submit their applications by October 15, while the deadline for schools to submit their nominees will remain October 31.

We estimate 5,000 applications will be received and processed in the 2003/2004 open season for PMI applications. During the 2002/2003 open season OPM received approximately 2,800 nominees, a 24% increase over the previous year and a 460% increase in the last 7 years. We estimate students will need 2 hours to complete the online application and resume builder and electronically submit it to their nominating school official. In addition, we estimate school nominating officials will need ½ hour to receive, review and render a decision on the student's application for nomination into the PMI program. The annual estimated burden for nominees is 10,000 hours and 2,500 hours for school nominating officials, for a total of 12,500 hours.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606–8358, fax (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please include your complete mailing address with your request.

DATES: Comments on this proposal should be received within 5 calendar days from the date of this publication. We are requesting OMB to take action within 15 calendar days from the close of this **Federal Register** Notice.

ADDRESSES: Send or deliver comments to: U.S. Office of Personnel Management, HRPS\CLCS\PMIP, ATTN: Rob Timmins, 1900 E Street, NW., Room 1425, Washington, DC 20415–9820, e-mail: *rtimmins@opm.gov.*
and

Allison Eydt, OPM Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–20326 Filed 8–8–03; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48275; File No. SR–Amex–2003–41]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to Listing Fees for Closed-End Funds

August 1, 2003.

On May 2, 2003, the American Stock Exchange LLC (''Amex'') submitted to 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 Sections 140 and 141 of the Amex *Company Guide* which would codify the practice of charging original listing and annual fees to closed-end funds listed under Section 101 of the Amex *Company Guide.* On June 10, 2003, the Amex filed Amendment No. 1 to the proposed rule change.[3] On June 16, 2003, the Amex filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 27, 2003.[5] The Commission received no comments on the proposal.

The Amex believes that the proposed rule change, as amended, codifies the existing fees that it assesses to closed-end fund issuers.[6] The Commission believes that the proposed rule change, as amended, should enhance the transparency of the fees that the Amex charges to closed-end fund issuers.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act [7] and the rules and regulations thereunder.[8] The Commission finds that the rule change, as amended, is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of the Amex provide for the equitable allocation of reasonable dues, fees, and other charges among its issuers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change, as amended (File No. SR–AMEX–2003–41) be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which replaced the original filing in its entirety, the Amex amended Section 146 of the Amex *Company Guide* to eliminate a reference to the multiple listing of closed-end funds by a single sponsor as an example of a situation where the Amex could reduce or waive listing fees when it deems that such action is appropriate to achieve an equitable result. *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 9, 2003.

[4] In Amendment No. 2, the Amex amended Section 141 of the Amex *Company Guide* to clarify that the Amex will base its annual fee for closed-end funds on the number of shares outstanding at the end of the calendar year. *See* letter from Michael Cavalier, Associate General Counsel, Amex to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 13, 2003.

[5] Securities Exchange Act Release No. 48074 (June 23, 2003), 68 FR 38413.

[6] Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Tim Fox, Attorney, Division of Market Regulation, Commission, on May 15, 2003.

[7] 15 U.S.C. 78f.

[8] 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).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20380 Filed 8–8–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48290; File No. SR–NSCC–2003–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Imposition of Fines

August 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 2, 2003, 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 modify NSCC Rule 16 and Addendum P to impose fines upon members and non-clearing members utilizing NSCC's Commission Settlement service when they fail to timely pay all or part of their monthly commission settlement obligations to NSCC.

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 modify NSCC's rules to provide that fines may be imposed upon members and non-clearing members utilizing NSCC's Commission Settlement service when they fail to timely pay all or part of their monthly commission settlement obligations to NSCC.

Under NSCC Rule 16 (Settlement of Commissions), NSCC provides a service where all payments of commissions due on business where a principal is given up between NSCC members and non-clearing members may be settled on a monthly basis. Rule 16 provides that if a member or non-clearing member is indebted to NSCC, it shall pay[3] the amount due to NSCC on or before the commission bill settlement date of each month, generally the 15th, as determined by NSCC. NSCC relies upon the timely receipt of the funds from such members and non-clearing members in order to pay others who are owed funds as a result of using the Commission Settlement service.

NSCC Rule 48 (Disciplinary Proceedings) allows NSCC to impose fines upon participants for any error, delay, or other conduct that is determined to be detrimental to NSCC's operations. Historically, NSCC has imposed fines upon participants for failure to timely settle end of day settlement balances, late settlement acknowledgement, and for late payment of clearing fund deposits. In 2002, NSCC commenced fining participants for failure to timely provide requested financial and operational information and for failure to timely notify NSCC on an ongoing basis of certain internal conditions which may cause NSCC to reevaluate the participants continued participation.[4] NSCC now intends to commence fining members and non-clearing members for failing to timely meet their obligations to NSCC arising out of their use of the Commission Settlement service.

The proposed rule change also amends NSCC Addendum P (Fine Schedule) to reflect the addition of the fines. The proposed fine schedule in NSCC Addendum P, Section 5, Settlement of Commissions, pursuant to NSCC Rule 16,[5] is as follows:

Net debit	First occasion	Second occasion	Third occasion	Fourth occasion (or greater)
$0–100,000	(1)	$100	$200	$300
$100,000–200,000	(1)	200	300	400
Greater than $200,000	(1)	300	400	500

Notes: (1) First occasions result in a warning letter to the Member/Non-clearing member.

(2) In addition to the fine, unpaid amounts will incur interest charges until paid.

In addition, Rule 16 has been modified to clearly state that failure to timely pay all or part of a monthly Commission Settlement balance may result in the imposition of a fine and may subject the member or non-clearing member to action by NSCC pursuant to Rule 46 (Restriction on Access to Services) or Rule 48 (Disciplinary Proceedings). Participants will continue to have the ability to contest fines as currently provided for within NSCC's rules and procedures.[6]

The proposed rule change is consistent with Section 17A(b)(3)(G) of the Act[7] and the rules and regulations thereunder because it will allow NSCC to impose fines upon late paying users of the Commission Settlement service thereby further ensuring that NSCC has the ability to appropriately discipline for violations of its rules.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Members and non-clearing members may make payment via ACH wire transfer, Fed Funds wire transfer, or by check made payable to NSCC.

[4] Securities Exchange Act Release No. 46903 (November 25, 2002), 67 FR 72012 (December 3, 2002) (order approving NSCC's rule change to fine members who fail to timely provide requested financial or operating information or who fail to provide other changes to NSCC).

[5] Fines to be levied for offenses within a moving twelve-month period beginning with the first occasion.

[6] *See, e.g.*, NSCC Rule 37 (Hearing Procedures).

[7] 15 U.S.C. 77(q–1)(b)(3)(G).

(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 will take effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and Rule 19b–4(f)(2) [9] thereunder because the proposed rule constitutes a due, fee, or other charge. At any time within sixty 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–2003–17. 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–2003–17 and should be submitted by September 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–20379 Filed 8–8–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3534]

State of Ohio

As a result of the President's major disaster declaration on August 1, 2003, I find that Mahoning, Medina, Portage, Summit, and Trumbull Counties in the State of Ohio constitute a disaster area due to damages caused by tornadoes, flooding, severe storms, and high winds occurring on July 21, 2003, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 30, 2003, and for economic injury until the close of business on May 3, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Ashland, Ashtabula, Columbiana, Cuyahoga, Geauga, Lorain, Stark, and Wayne in the State of Ohio; and Crawford, Lawrence, and Mercer counties in the State of Pennsylvania.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 353411. For economic injury the number is 9W6300 for Ohio; and 9W6400 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 4, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–20313 Filed 8–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3531]

State of Texas; Amendment # 3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 1, 2003, the above numbered declaration is hereby amended to include Atascosa, McMullen and Zavala counties as disaster areas due to damages caused by Hurricane Claudette occurring on July 15, 2003 and continuing through July 28, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bexar, Kinney, Maverick and Webb in the State of Texas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 16, 2003, and for economic injury the deadline is April 19, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 4, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–20312 Filed 8–8–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4438]

Bureau of Economic and Business Affairs; Participating Countries (Hereinafter Known as ''Participants'') Eligible for Trade in Rough Diamonds under the Clean Diamond Trade Act (Pub. L 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with Sections 3 and 6 of the Clean Diamond Trade Act (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting authorities.

FOR FURTHER INFORMATION CONTACT: Jay L. Bruns, Special Negotiator for Conflict Diamonds, Bureau of Economic and Business Affairs, Department of State, (202) 647–2857.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the ''Act'') requires the President to prohibit the importation into, and the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under Section 3(2) of the Act, ''controlled through the Kimberley Process Certification Scheme'' means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) Carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR part 592 (''Rough Diamond Control Regulations'').

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants. Section 2 of Executive Order 13312 of July 29, 2003 delegates this function to the Secretary of State. Section 3(7) of the Act defines ''Participant'' as a state, customs territory, or regional economic integration authority identified by the Secretary of State. Section 3(3) of the Act defines ''Exporting Authority'' as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines ''Importing Authority'' as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment. The List of Participants will be updated periodically as additional entities meet the requirements of the Act.

Pursuant to Section 3 of the Clean Diamond Trade Act (the Act), Section 2 of the Executive Order 13312 of July 29, 2003, and Delegation of Authority No. 245 (April 23, 2001), I hereby identify the following entities as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as provided in Section 6(b) of the Act.

List of Participants

Algeria—Ministry of Energy and Mines.
Angola—Ministry of Geology and Mines.
Armenia—Ministry of Trade and Economic Development.
Australia—Export Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.
Belarus—Department of Finance.
Botswana—Ministry of Minerals, Energy and Water Resources.
Brazil—Ministry of Mines and Metallurgy.
Burkina Faso—Importing and Exporting Authority not currently available.
Cameroon—Importing and Exporting Authority not currently available.
Canada—Natural Resources Canada.
Central African Republic—Ministry of Energy and Mining.
China—General Administration of Quality Supervision, Inspection and Quarantine.
Democratic Republic of the Congo—Ministry of Mines and Hydrocarbons.
Republic of the Congo—Ministry of Mines and Geology.
Cyprus—Importing and Exporting Authority not currently available.
Czech Republic—Ministry of Finance.
European Community—DG/External Relations/A.2.
Gabon—Ministry of Mines, Energy, Oil and Hydraulic Resources.
Ghana—Precious Metals Marketing Company, Limited.
Guinea—Ministry of Mines and Geology.
Guyana—Geology and Mines Commission.
Hungary—Ministry of Economy and Transport.
India—The Gem and Jewellery Export Promotion Council.
Israel—The Diamond Controller.
Ivory Coast—Ministry of Mines and Energy.
Japan—Ministry of Economy, Trade and Industry.
Democratic Peoples Republic of Korea—Korea Daesong Trading Corporation.
Republic of Korea—Ministry of Commerce, Industry and Enterprise.
Laos—Ministry of Finance.
Lebanon—Ministry of Economy and Trade.
Lesotho—Commissioner of Mines and Geology.
Malaysia—Ministry of International Trade and Industry.
Mali—Department of Mines, Energy and Water.
Malta—Importing and Exporting Authority not currently available.
Mauritius—Ministry of Commerce.
Mexico—Importing and Exporting Authority not currently available.
Namibia—Ministry of Mines and Energy.
Norway—Ministry of Foreign Affairs.
Philippines—Importing and Exporting Authority not currently available.
Poland—Ministry of Economy, Labour and Social Policy.
Russia—Gokhran, Ministry of Finance.
Sierra Leone—Government Gold and Diamond Office.
Slovenia—Ministry of Finance.
South Africa—South African Diamond Board.
Sri Lanka—National Gem and Jewellery Authority.
Swaziland—Geological Surveys and Mines Department.
Switzerland—State Secretariat for Economic Affairs.
Taiwan—Bureau of Foreign Trade.
Tanzania—Commissioner for Minerals.
Thailand—Ministry of Commerce.
Togo—Ministry of Mines and Geology.
Tunisia—Ministry of Commerce.
Turkey—Importing and Exporting Authority not currently available.
Ukraine—State Gemological Centre of Ukraine.
United Arab Emirates—Dubai Metals and Commodities Center.
United States of America—Importing Authority—The United States Bureau of Customs and Border Protection; Exporting Authority—The Bureau of the Census.
Venezuela—Ministry of Energy and Mines.
Vietnam—Ministry of Trade.
Zimbabwe—Ministry of Mines and Mining Development.

This notice shall be published in the **Federal Register**.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 03–20391 Filed 8–8–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 25, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15787.

Date Filed: July 25, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 315 PTC2 ME 0127 dated 25 July 2003 r1–r15; Minutes—PTC2 ME 0128 dated 25 July 2003; Tables—PTC2 Fares 0046 dated 25 July 2003; Intended effective date: 1 January 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–20416 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending July 25, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–4330.

Date Filed: July 23, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 13, 2003.

Description: Amendment of Air Tahiti Nui, pursuant to 49 U.S.C. Section 41302, 14 CFR 211.20 and subpart B, requesting that its application for an initial foreign air carrier permit be expanded to operate scheduled international air transportation, on inter alia, Route 4, which allows operation of service from points behind French Polynesia via French Polynesia and intermediate points to a point or points in the United States and beyond.

Docket Number: OST–2001–10529.

Date Filed: July 23, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 13, 2003.

Description: Application of Arizona Express Airlines Inc., requesting a waiver from the 45-Day filing requirement for renewal of its commuter authority.

Docket Number: OST–2002–12683.

Date Filed: July 24, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 14, 2003.

Description: Application of Evergreen International Airlines, Inc., requesting the start-up period for its experimental certificate of public convenience and necessity for Route 816 be extended through September 23, 2003.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–20417 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 20–27F, Certification and Operation of Amateur-Built Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 20–27F, Certification and Operation of Amateur-Built Aircraft for review and comment.

The proposed AC is written in plain language in an effort to keep this guidance simple and easy to understand. No guidance material changed during the rewrite of this document.

DATES: Comments submitted must identify the proposed AC 20–27F and be received by September 5, 2003.

ADDRESSES: Copies of the proposed AC 20–27F can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production and Airworthiness Division, AIR–200, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Rodney Watson, Airworthiness Certification Branch, AIR–220, Production and Airworthiness Division, Room 815, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 20–27F provides information and guidance on the fabrication and assembly, airworthiness certification, and operation of amateur-built aircraft of all types; explains the amount of fabrication and assembly the builder must accomplish for the aircraft to be eligible for amateur-built certification; and describes the role of the FAA in the certification process.

Interested persons are invited to comment on the proposed AC 20–27F listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All comments received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 20–27F may be examined before and after the comment closing date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 a.m.

Issued in Washington, DC on August 1, 2003.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Division, AIR–200.

[FR Doc. 03–20409 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13—M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval of a new information collection activity. The ICR describes the nature of the information collection and the expected burden. A Notice of Proposed Rulemaking was published in the **Federal Register** on September 27, 2002, pages 61238–61240. Over 3,700 public comments were received in response to the publication, the response to which is included in the preamble of the final rule.

DATES: Comments must be submitted on or before September 10, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Jerry Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Reports by Carriers on Incidents Involving Animals During Air Transport.

Type of Request: New Collection.

OMB Control Number: 2120–xxxx.

Form(s): N/A.

Affected Public: A total of 30 transport air carriers.

Abstract: Congress mandated this rule as part of Public Law 106–810, to require air carriers to track and report incidents of loss, injury, or death of a pet during transport. The information gathered and reported by the air carriers will provide the public with valuable information when choosing an air carrier to use when traveling with a pet. Air carriers that transport pets will be the respondents.

Estimated Annual Burden Hours: An estimated 360 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 5, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–20410 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collections and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on April 17, 2003 on page 19066.

DATES: Comments must be submitted on or before September 10, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviation Research Grants Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0559.

Form(s): FAA Forms 9550–1, 9550–2, 9550–3, 9550–5, SF–5, SF–269, SF–270, SF–272, SF–LLL.

Affected Public: A total of 100 Grant Applicants.

Abstract: The FAA Aviation Research and Development Grants Program establishes uniform policies and procedures for the award and administration of research grants to colleges, universities, not for profit organizations, and profit organizations for security research. This program implements OMB Circular A–110, Public Law 101–508 sections 9205 and 9208 and Public Law 101–604, section 107(d).

Estimated Annual Burden Hours: An estimated 1,400 hours annually.

Title: Laser Operations in the Navigable Airspace (Advisory Circular (AC), Outdoor Laser Operations)

Type of Request: Extension of a currently approved collection

OMB Control Number: 2120–0662.

Affected Public: A total of 20 operators of laser emissions.

Abstract: The FAA requires the information in the interest of aviation safety to protect aircraft operations from the potential hazardous effect of laser emissions. The information collected is reviewed for its impact on aviation in the vicinity of the laser activity. Upon completion of the review of the information, the FAA issues a letter of determination to the respondent in regard of their request.

Estimated Annual Burden Hours: An estimated 2,200 hours annually.

ADDRESS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 4, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–20412 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Six Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), the FAA invites public comment on six currently approved pubic information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before October 10, 2003.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0021: Certification, Pilots and Flight Instructors. 14 CFR 61 prescribes certification requirements for pilots, flight instructors, and ground instructors. The information collected is used to determine the applicant's compliance with the certification requirements and eligibility. The current estimated annual reporting burden is 252,100 hours.

2. 2120–0036: Notice of Landing Area Proposal. 14 CFR part 157 requires that each person who intends to construct, activate, deactivate, or change the status of an airport, runway, or taxiway, must notify the FAA. The collected information is used to determine the effect the proposed action would have on existing airports and on the safe and efficient use of the airspace, the traffic patterns of other airports, the existing airport structure and projected FAA programs. The current estimated annual reporting burden is 2,901 hours.

3. 2120–0085: Certification and Operations: Federal Aviation Regulations part 125. Part A of Subtitle VII of the Revised Title 49 U.S.C., authorizes the issuance of regulations governing the use of navigable airspace. 14 CFR part 125 prescribes requirements for leased aircraft, Aviation Service Firms, and Air Travel Clubs. The information collected by the agency is used to determine the applicant's eligibility for certification in these areas. The current estimated annual reporting burden is 29,445 hours.

4. 2120–0607: Pilot Records Improvement Act of 1996. Title 49 U.S.C. 44936(f) mandates that airlines obtain safety records of prospective employees from the Federal Aviation Administration and from previous employers. The information collected is used to determine the eligibility of applicants for employment. The current estimated annual reporting burden is 101,708 hours.

5. 2120–0620: Special Federal Aviation Regulation No. 71. Special Federal Aviation Regulation (SFAR) No. 71 applies to air tour operators in Hawaii. SFAR requires that parts 121 and 135 air tour operators verbally brief their passengers on safety, particularly related to overwater operations before each air tour flight. The current estimated annual reporting burden is 6,667 hours.

6. 2120–0666: Noise Levels for U.S. Certified and Foreign Aircraft; Estimated Airplane Noise Levels in A-Weighted Decibels. The FAA published Advisory Circular (AC) 36–1G, ''Noise Levels for U.S. Certificated and Foreign Aircraft'' in August 1997, and AC36–3G, ''Estimated Airplane Noise Levels in A-Weighted Decibels'' in April 1996. AC36–1G contains a list of aircraft noise certification levels. AC36–3G contains a list of estimated airplane noise levels in A-weighted decibels (dBA). The FAA collects data from aircraft manufacturers (or modifiers) to verify or supplement data that resides within the FAA for use in updating and publishing the two ACs. The current estimated annual reporting burden is 875 hours.

Issued in Washington, DC, on July 31, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 03–20413 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Martin County Airport/Witham Field, Stuart, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Martin County Board of Commissioners for Martin County Airport/Witham Field under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Martin County Airport/Witham Field under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before January 30, 2004.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is July 30, 2003. The public comment period ends September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822, (407) 812–6331, Extension 30. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Martin County Airport/Witham Field are in compliance with applicable requirements of part 150, effective July 30, 2003. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 30, 2004. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the

Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Martin County Board of Commissioners submitted to the FAA on May 23, 2003 noise exposure maps, descriptions and other documentation which were produced during the Martin County Airport/Witham Field FAR Part 150 Noise Study conducted between July 10, 2000 and May 23, 2003. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by Martin County Board of Commissioners. The specific maps under consideration are ''2002 Noise Exposure Map (NEM)'' and ''2007 Noise Exposure Map (NEM)'' in the submission. The FAA has determined that these maps for Martin County Airport/Witham Field are in compliance with applicable requirements. This determination is effective on July 30, 2003. FAA's determination on the airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Martin County Airport/Witham Field, also effective on July 30, 2003. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 30, 2003.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, July 30, 2003.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 03–20414 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communication System (NEXCOM).

DATES: The meeting will be held on September 25, 2003, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- September 25:
  - Sign in and Introductions.
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda and Minutes of Previous Meeting.
  - Review of June Program Management Committee (PMC) Input to the National Airspace Systems (NAS).
  - Closing Plenary Session (Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 1, 2003.

Robert Zoldos,

FAA Systems Engineers, RTCA Advisory Committee.

[FR Doc. 03–20415 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 2003, there were eight applications approved. Additionally, 18 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals 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). This notice is published pursuant to paragraph d of section 158.29.

PFC Applications Approved

Public Agency: Wood County Airport Authority, Parkersburg, West Virginia.

Application Number: 03–02–C–00–PKB.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $286,543.

Earliest Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: February 1, 2009.

Class of Air Carriers not Required to Collect PFC's:

Classes of Air Carriers not Required to Collect PFC's:

(1) All air carriers operating under Part 135; (2) all air carriers operating under Part 91; (3) any unscheduled carriers operating under Part 121.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Wood County Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Terminal improvements.
Airfield drainage improvements.
Aircraft parking apron rehabilitation.
Master plan update.
Purchase snow removal equipment.
Terminal/security improvements.
Rehabilitate runway 3/21.

Decision Date: June 2, 2003.

For Further Information Contact: Matthew DiGiulian, Beckley Airports Field Office, (304) 252–6216.

Public Agency: Lehigh-Northampton Airport Authority, Allentown, Pennsylvania.

Application Number: 03–06–C–00–ABE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $3,135,365.

Earliest Charge Effective Date: September 1, 2003.

Estimated Charge Expiration Date: March 1, 2005.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Lehigh Valley International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Loading bridges—post concourse.
Loading bridges—regional jet modifications.
Design and construct airfield electrical vault.
Design and construct aircraft rescue and firefighting facility.
Airfield security perimeter fencing.
Runway protection zone land acquisition, runway 24, and land acquisition in transitional surface.
Noise mitigation—sound insulation ((phase II).
Land acquisition, runway 6–24 noise.
Design and construct air cargo apron—phase II.
Noise mitigation—sound insulation.
Taxiway A rehabilitation.
General aviation apron.

Decision Date: June 6, 2003.

For Further Information Contact; Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Salt Lake City Department of Airports, Salt Lake City, Utah.

Application Number: 03–06–C–00–SLC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $39,756,400.

Earliest Charge Effective Date: February 1, 2003.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers not Required to Collect PFC's; Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Salt Lake City International Airport (SLC).

Brief Description of Projects Approved for Collection at SLC and Use at SLC at a $4.50 PFC Level:

Concourse A apron expansion.
Concourse A apron expansion.
Concourse A apron reconstruction, phase I.
Concourse A apron reconstruction, phase II.
Deicing lagoon upgrade.
Security identification display area perimeter patrol road, phase I.
Security identification display area perimeter patrol road, phase II.
Taxiway H reconstruction H10–H12.
Taxiway H reconstruction H7–H10.
Terminal unit 2 checked baggage and screening checkpoint queuing modifications.
Concourse E SkyWest interim facility.
Land acquisition for approach protection and noise compatibility, phase I.
Terminal roadway security improvements, phase II.
Taxiway H pavement reconstruction H2–H4.
Runway 16L/34R overlay.
North support tunnel road rehabilitation.
Taxiway P extension.
Blast analysis study.
Security detection equipment modifications.
Security gate modifications.

Brief Description of Project Partially Approved for Collection at SLC and Use at SLC at a $4.50 PFC Level:

Maintenance equipment (snow removal equipment and aircraft rescue and firefighting equipment).

Determination: Six proposed vehicles did not meet eligibility requirements and were disapproved. One aircraft rescue and firefighting vehicle exceeded the minimum size of equipment required. A smaller size vehicle, meeting minimum requirements was approved in its place.

Brief Description of Projects Approved for Collection at SLC and Use at SLC at A $3.00 PFC Level:

Airport layout plan/environmental update, phase I.
Electronic visual information display system installation.
East apron rehabilitation, phase II.
East apron rehabilitation, phase III.
Surface condition analyzer upgrade.
Mechanical plant security upgrades.
Unattended baggage storage area.
Terminal One bag carousel modifications.

Terminal access road reconfiguration.

Brief Description of Project Approved for Collection at SLC and Use at Salt Lake Airport II at a $3.00 PFC Level:

Airport II runway overlay.

Brief Description of Project Approved for Collection at SLC and Use at Tooele Valley Airport at a $3.00 PFC Level:

Runway 16/34 widening and extension.

Brief Description of Disapproved Project:

East side oil/water separator.

Determination: The FAA has determined that the project does not meet any of the objectives of section 158.15(a). The public agency did not provide documentation regarding project justification, nor did it demonstrate compliance with Advisory Circular 150/5320–15 for water quality equipment.

Decision Date: June 11, 2003.

For Further Information Contact: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Roswell, New Mexico.

Application Number: 03–02–C–00–ROW.

Application Type: Impose and use a PFC.

PFC Level: $4.50

Total PFC Revenue Approved in this Decision: $134,082.

Earliest Charge Effective Date: February 1, 2004.

Estimated Charge Expiration Date: May 1, 2006.

Classes of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Reconstruct runway 17/35.

PFC application and administrative fees.

Brief Description of Withdrawn Projects:

Aircraft rescue and firefighting access roads.

Airfield safety improvements.

Install precision approach path indicator/runway end identifier lights for runways 3 and 17/35.

Replace runway 17/35 shoulders.

Determination: These projects were withdrawn by the public agency before the FAA's decision was issued.

Decision Date: June 12, 2003.

For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Delta County, Escanaba, Michigan.

Application Number: 03–07–C–00–ESC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $40,000.

Earliest Charge Effective Date: March 1, 2004.

Estimated Charge Expiration Date: January 1, 2006.

Classes of Air Carriers not Required to Collect PFC's: (1) Air taxis; (2) charters.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Delta County Airport.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level:

Expand terminal parking lot.

Relocate airport access road.

Brief Description of Project Approved for Use at a $3.00 PFC Level:

Construct runway safety area for runway 9.

Decision Date: June 25, 2003.

For Further Information Contact: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: Port of Port Angeles, Washington.

Application Number: 03–06–C–00–CLM.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $313,484.

Earliest Charge Effective Date: October 1, 2003.

Estimated Charge Expiration Date: June 1, 2008.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Drainage system construction.

General aviation site development.

Obstruction removal.

Taxiway restriping and reflector installation.

Runway 26 safety area improvement.

Decision Date: June 27, 2003.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: County of Marquette, Gwinn, Michigan.

Application Number: 03–07–C–00–SAW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $545,520.

Earliest Charge Effective Date: June 1, 2004.

Estimated Charge Expiration Date: March 1, 2006.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Construct automatic weather observation system.

Furnish and install an instrument landing system.

Furnish and install a beacon.

Furnish and install precision approach path indicator and runway end identifier lights.

Taxiway shoulder repair.

PFC audit fees.

Provide new aircraft rescue and firefighting vehicle and snow removal equipment building.

Snow removal equipment.

Decision Date: June 30, 2003.

For Further Information Contact: Arlene B. Draper, Detroit Airports District Office, (734) 229–2929.

Public Agency: County of Milwaukee, Wisconsin.

Application Number: 03–08–U–00–MKE.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to be Used in this Decision: $74,714,258.

Charge Effective Date: May 1, 2004.

Estimated Charge Expiration Date: December 1, 2011.

Class of Air Carriers not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use:

C concourse stem and 6-gate expansion.

Decision Date: June 30, 2003.

For Further Information Contact: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Amendments to PFC approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amemded estimated charge exp. date
01–02–C–01–HRL Harlingen, TX.	05/27/03	$5,032,330	$6,025,961	02/01/06	06/01/07
93–01–C–01–LAX Los Angeles, CA.	06/02/03	$116,109,000	$116,370,846	01/01/96	01/01/96
96–02–U–01–LAX Los Angeles, CA.	06/02/03	NA	NA	01/01/96	01/01/96
93–01–I–02–ONT Ontario, CA.	06/02/03	33,148,439	27,333,931	12/01/96	12/01/96
95–02–U–01–ONT Ontario, CA.	06/02/03	NA	NA	12/01/96	12/01/96
01–02–C–02–SDF Louisville, KY.	06/02/03	15,789,940	10,732,140	04/01/18	04/01/17
01–02–C–01–BJI Bemidji, MN.	06/10/03	201,952	416,452	10/01/03	08/01/05
01–04–C–01–DAY Dayton, OH.	06/10/03	64,544,267	63,946,085	12/01/13	12/01/13
02–05–C–01–MSY New Orleans, LA.	06/12/03	148,665,172	135,190,660	04/01/05	07/01/03
97–02–C–02–TYR Tyler, TX.	06/13/03	1,166,292	1,046,577	01/01/03	09/01/03
93–01–C–14–ORD Chicago, IL.	06/19/03	1,145,473,994	1,155,421,243	12/01/05	04/01/04
95–03–C–06–ORD Chicago, IL.	06/19/03	NA	NA	12/01/05	04/01/04
96–05–C–08–ORD Chicago, IL.	06/19/03	467,714,130	467,714,130	04/01/08	04/01/08
92–01–C–06–DTW Detroit, MI.	06/20/03	1,604,483,000	2,198,215,360	05/01/18	05/01/26
96–02–U–01–DTW Detroit, MI.	06/20/03	NA	NA	05/01/18	05/01/26
97–03–C–03–DTW Detroit, MI.	06/20/03	54,967,000	54,967,000	10/01/29	10/01/29
96–05–C–01–SMF Sacramento, CA.	06/25/03	62,823,190	48,223,407	08/01/06	01/01/06
00–06–C–01–SMF Sacramento, CA.	06/25/03	115,700,000	115,700,000	11/01/13	03/01/11

Dated: Issued in Washington, DC on August 1, 2003

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 03–20411 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Notification Regarding the Use of Approved Model List (AML) for Avionics Systems and Component Installation Approvals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent and request for comments.

SUMMARY: AML Supplemental Type Certificate (STC) Approvals for installation of complex avionics system and components targeted for installation in small airplanes are deemed as significant programs as defined in Order 8100.5 and Order 8110.4 and require coordination with the Small Airplane Directorate until otherwise noted. This includes AML STC approvals made by holders of FAA delegations—Designated Alteration Station (DAS) or Delegation Option Authorization (DOA). Complex avionics projects can sometimes be controversial since they may involve new technology that has either not been previously certified, or for which certification criteria has not been published. The increased coordination is necessary to improve standardization of the AML STC process and develop better practices for future AML STC policy.

DATES: Send comments on or before August 31, 2003.

ADDRESSES: Address comments to the individual assigned under **FOR FURTHER INFORMATION CONTACT.** Comments may be mailed to: Federal Aviation Administration, Regulations & Policy, ACE–110, Room 301, 901 Locust, Kansas City, Missouri 64106. Also, comments may be sent by electronic mail to *wes.ryan@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127, fax (816) 329–4090.

SUPPLEMENTARY INFORMATION

Comments Invited

We invite your comments on this notice. Send any data or views pertaining to the subject of this notice, as desired. Identify comments with ''AML STC Process Comments, ATTN: Wes Ryan''. The FAA will consider all comments received on or before the closing date listed above before issuing a final notification.

Background Information

AML STC approvals have ranged from simple in-flight entertainment systems to complex primary flight displays. There has been a wide variation in the complexity of the avionics systems and components being approved for use in small airplanes and in the interpretation of current guidance regarding approval of these systems using the AML process. In addition, the ACO procedures for adding or removing models to the AML are not standardized. As a result, the coordination of all AML STC projects with the FAA Small Airplane Directorate Standards Office should facilitate standardization of the AML STC process.

Issued in Kansas City, Missouri, on July 21, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20405 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15853]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before October 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Franklin, Maritime Administration, (MAR–610), 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–2628, FAX:

202–366–3954; or e-mail: *michael.franklin@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Automated Mutual-Assistance Vessel Rescue System (AMVER).

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0025.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information. This collection of information is used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of search and rescue in the saving of lives at sea and for the marshalling of ships for national defense and safety purposes.

Need and Use of the Information: This information collection is necessary for maintaining a current plot of U.S.-flag and U.S.-owned vessels.

Description of Respondents: Respondents are U.S.-flag and U.S. citizen-owned vessels.

Annual Responses: 28,160 responses.

Annual Burden: 2,253 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. e.d.t. (or e.s.t.), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator.

Dated: August 5, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–20393 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss the Council's Team reports, its SEA–21 proposal, and other issues. A public comment period is scheduled for 9 a.m. to 9:30 a.m. on Thursday, September 4, 2003. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Raymond Barberesi by August 27, 2003. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by September 11, 2003.

DATES: The meeting will be held on Wednesday, September 3, 2003, from 1 p.m. to 5:30 p.m. and Thursday, September 4, 2003, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held in the Omni San Francisco Hotel, 500 California Street, San Francisco, CA 94104. The hotel's phone number is (415) 677–9494.

FOR FURTHER INFORMATION CONTACT: Raymond Barberesi, (202) 366–4357; Maritime Administration, MAR–830, Room 7201, 400 Seventh St., SW., Washington, DC 20590; *Raymond.Barberesi@marad.dot.gov.*

(Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B)

Dated: August 5, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–20392 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2003–15702]

Reports, Forms, and Recordkeeping Requirements.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public; it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB reinstatement approval.

DATES: Comments must be received on or before October 10, 2003.

ADDRESSES: Comments must refer to the docket 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. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Kevin Ball, NHTSA, 400 Seventh Street, SW., Room 5110, NPO–400, Washington, DC 20590. Mr. Ball's telephone number is (202) 366–5649. His fax number is (202) 493–2833. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations

describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Air Bag Deactivation.

OMB Control Number: 2127–0588.

Affected Public: Private individuals, fleet owners and lessees, motor vehicle dealers, repair business, airbag switch installers.

Abstract: If a private individual or lessee wants to install an air bag on-off switch to turn-off either or both frontal air bags, they must complete Form OMB 2127–0588 to certify certain statements regarding use of the switch. The airbag switch installer must then submit the completed forms to NHTSA within seven days. The information obtained from completed forms requesting airbag deactivation will assist NHTSA in monitoring the number of requests, the reasons for such request and the motor vehicles affected. They will also aid the agency in monitoring whether the airbag switch installer completed the work. The completed forms will enable the agency to determine whether the airbag switch installer are complying with the terms of the exemption, which include a requirement that airbag switch installers accept only fully completed forms. Finally, submission of the completed forms to the agency will promote compliance and accuracy in the completion of the forms by vehicle owners. The air bag On-Off switches are installed only in motor vehicles in which the risk of harm needs to be minimized on a case-by-case basis.

Estimated Annual Burden: 7,500 hours.

Estimated Number of Respondents: 15,000.

Susan White,

Chief Information Officer.

[FR Doc. 03–20322 Filed 8–8–03; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Comment Request on Performance Rating System

ACTION: Notice and request for comments.

SUMMARY: Currently, the Community Development Financial Institutions Fund (the ''Fund''), within the Department of the Treasury, is soliciting comments on the indicators it will use to measure a community development financial institutions' performance in four areas: Community development impact, financial strength, portfolio quality, and management.

DATES: Written comments should be received on or before October 10, 2003, to be assured of consideration.

ADDRESSES: Address all comments to: Donna Fabiani, Manager for Financial Strategies and Research, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, *PLUMcomment@cdfi.treas.gov,* or fax (202) 622–3569.

FOR FURTHER INFORMATION CONTACT: Donna Fabiani, Manager for Financial Strategies and Research, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, *PLUMcomment@cdfi.treas.gov,* or fax (202) 622–3569.

SUPPLEMENTARY INFORMATION:

Title: PLUM: CDFI Performance Rating System.

Abstract: The Fund's mission is to expand the capacity of financial institutions to provide credit, capital and financial services to underserved populations and communities in the U.S. The Fund's strategic goal is to improve the economic conditions of underserved communities by providing capital and technical assistance to community development financial institutions (''CDFIs''), capital to insured depository institutions, and tax credit allocations to community development entities (''CDEs''), which provide credit, capital, financial services, and development services to these markets. The Fund certifies entities as CDFIs and CDEs.

The Fund has over three hundred CDFIs in its CDFI Program investment portfolio. To better manage this portfolio and to better target its limited resources, the Fund is developing a performance rating system that will rank CDFIs according to their overall financial strength and their potential for creating community development impact. The PLUM rating system will assess a CDFI's performance relative to that of its peers. Each CDFI will be scored in four components: Performance effectiveness (*i.e.*, community development impact); Leverage, liquidity and solvency; Underwriting; and Management. These four component scores will then be aggregated into a single PLUM rating.

The Fund plans to use PLUM to monitor the Fund's portfolio of CDFI awardees, recognize and communicate best practices for community development finance, underwrite CDFIs, and target the Fund's technical resources to CDFIs that need to improve their performance. PLUM can be a valuable tool for CDFIs. CDFIs can use PLUM to conduct self-assessments and improve their performance, compare their performance to their peers and industry standards, and identify best practices to strive for over time.

The Fund is making major investments in technology to collect and store the data needed for PLUM analyses. PLUM analyses for non-regulated institutions will be based on data collected through the Community Investment Intelligence System (CIIS), the Fund's new data collection system. PLUM analyses for regulated institutions will be based on their CAMEL rating for the ''L,'' ''U,'' and ''M'' components (provided the Fund has access to the CAMEL rating), as well as community development impact data collected through CIIS. CIIS will collect and store CDFIs' transaction-level and institution-level data. The system is being designed to communicate, where possible, with the technology CDFIs currently use, thereby facilitating the transfer of large volumes of data to the Fund. The Fund's contractor, E F Kearney, will work with CDFIs in the system design phase with the goal of developing a sophisticated yet user-friendly web-based data transmission process. The Fund expects to implement CIIS in December 2003.

To view the proposed PLUM indicators, visit the Fund's Web site at *www.cdfifund.gov* and click on ''CDFI Fund seeking comments on PLUM.''

Request for Comments: Comments submitted in response to this notice will

become a matter of public record. Comments are invited on all aspects of PLUM, but commentators may wish to focus particular attention on: (a) The appropriateness of the indicators for measuring a CDFI's community development impact, financial condition, portfolio quality, and management capacity; (b) other indicators that may better measure CDFI performance; (c) the Fund's use of PLUM to monitor its portfolio of CDFI awardees; (d) the Fund's use of PLUM in underwriting; (e) the ability of the Fund to access CAMEL ratings for regulated institutions; (f) the number of peer groups needed to have meaningful peer analysis in the diverse community development field; (g) the number of years of data needed for reliable peer group analysis; (h) awardee and external audience's access to PLUM scores (*i.e.*, should the Fund publicly share PLUM scores); and (i) the frequency with which the Fund should calculate PLUM scores for each CDFI.

Authority: 12 U.S.C. 4703, 4703 note, 4707, 4710, 4714, 4717; 31 U.S.C. 321; and 12 CFR part 1805.

Dated: August 1, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–20337 Filed 8–8–03; 8:45 am]

BILLING CODE 4810–70–P

Corrections

Federal Register

Vol. 68, No. 154

Monday, August 11, 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.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030715174–3174–01]

Revisions to the Unverified List—Guidance as to ''Red Flags''

Correction

In notice document 03–19017 beginning on page 44039 in the issue of Friday, July 25, 2003 make the following correction:

On page 44039, in the third column, in the third full paragraph, in the first line ''has not conducted'' should read ''has now conducted''.

[FR Doc. C3–19017 Filed 8–8–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS-1470-F]

RIN 0938-AL89

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates

Correction

In rule document 03–19363 beginning on page 45346 in the issue of Friday August 1, 2003, make the following correction:

§412.87 [Corrected]

On page 45469, in the third column, in §412.87, under the section heading, paragraph ''(a)'' should read ''(b)''.

[FR Doc. C3–19363 Filed 8–8–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15454; Airspace Docket No. 03–ACE–52]

Modification of Class E Airspace; Wichita Mid-Continent Airport, KS

Correction

In rule document 03–17766 beginning on page 41691 in the issue of Tuesday, July 15, 2003, make the following corrections:

1. On page 41691, in the third column, under the **SUPPLEMENTARY INFORMATION** section, in the 22nd line, after ''KS'' insert ''revealed several discrepancies in the Wichita Mid-Continent Airport, KS''.

2. On the same page, in the same column, under the same section, in the 35th line, ''24 CFR'' should read ''14 CFR ''.

§71.1 [Corrected]

3. On page 41692, in the second column, in § 71.1, under the heading ''**ACE KS E5 Wichita Mid-Continent Airport, KS**'', in the sixth line should read, ''(Lat. 37°37′33″ N.,'' should read ''(Lat. 37°37′23″ N.,''.

4. On the same page, in the same column, in the same section, under the same heading, in the eighth line from the bottom, ''west east'' should read ''west and 5 miles east''.

5. On the same page, in the third column, in the same section, in the first paragraph, in the sixth line, ''lone '' should read ''line''.

6. On the same page, in the same column, in the same section, in the same paragraph, in the seventh line, ''AUGRA'' should read ''AUBRA''.

[FR Doc. C3–17766 Filed 8–8–03; 8:45 am]

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Federal Register

Monday,
August 11, 2003

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–7530–5]

RIN 2040—AD37

National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In this document, the Environmental Protection Agency (EPA) is proposing National Primary Drinking Water Regulations that require the use of treatment techniques, along with monitoring, reporting, and public notification requirements, for all public water systems (PWSs) that use surface water sources. The purposes of the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) are to improve control of microbial pathogens, including specifically the protozoan *Cryptosporidium*, in drinking water and to address risk-risk trade-offs with the control of disinfection byproducts. Key provisions in today's proposed LT2ESWTR include the following: source water monitoring for *Cryptosporidium*, with reduced monitoring requirements for small systems; additional *Cryptosporidium* treatment for filtered systems based on source water *Cryptosporidium* concentrations; inactivation of *Cryptosporidium* by all unfiltered systems; disinfection profiling and benchmarking to ensure continued levels of microbial protection while PWSs take the necessary steps to comply with new disinfection byproduct standards; covering, treating, or implementing a risk management plan for uncovered finished water storage facilities; and criteria for a number of treatment and management options (*i.e.,* the microbial toolbox) that PWSs may implement to meet additional *Cryptosporidium* treatment requirements. The LT2ESWTR will build upon the treatment technique requirements of the Interim Enhanced Surface Water Treatment Rule and the Long Term 1 Enhanced Surface Water Treatment Rule.

EPA believes that implementation of the LT2ESWTR will significantly reduce levels of *Cryptosporidium* in finished drinking water. This will substantially lower rates of endemic cryptosporidiosis, the illness caused by *Cryptosporidium*, which can be severe and sometimes fatal in sensitive subpopulations (*e.g.,* AIDS patients, the elderly). In addition, the treatment technique requirements of this proposal are expected to increase the level of protection from exposure to other microbial pathogens (*e.g., Giardia lamblia*).

DATES: EPA must receive public comment on the proposal by November 10, 2003.

ADDRESSES: Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0039. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Daniel Schmelling, Office of Ground Water and Drinking Water (MC 4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (202) 564–5281. For regulatory inquiries, contact Jennifer McLain at the same address; telephone (202) 564–5248. For general information contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Who Is Regulated by This Action?

Entities potentially regulated by the LT2ESWTR are public water systems (PWSs) that use surface water or ground water under the direct influence of surface water (GWUDI). Regulated categories and entities are identified in the following chart.

Category	Examples of regulated entities
Industry	Public Water Systems that use surface water or ground water under the direct influence of surface water.
State, Local, Tribal or Federal Governments.	Public Water Systems that use surface water or ground water under the direct influence of surface water.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of public water system in § 141.3 of Title 40 of the Code of Federal Regulations and applicability criteria in §§ 141.76 and 141.501 of today's proposal. If you have questions regarding the applicability of the LT2ESWTR to a particular entity, consult one of the persons listed in the preceding section entitled **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 ID No. OW–2002–0039. 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 Water 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 Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket material, please call (202) 566–2426 to schedule an appointment.

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. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other

information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in 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 section I.B.1.

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.

C. 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.

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.

a. *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. OW–2002–0039. 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.

b. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov,* Attention Docket ID No. OW–2002–0039. 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.

c. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send three copies of your comments and any enclosures to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0039.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, EPA Docket Center, Environmental Protection Agency, Room B102, 1301 Constitution Ave., NW, Washington, DC, Attention Docket ID No. OW–2002–0039. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

D. 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.

Abbreviations Used in This Document

AIPC All Indian Pueblo Council
ASDWA Association of State Drinking Water Administrators
ASTM American Society for Testing and Materials
AWWA American Water Works Association
AWWARF American Water Works Association Research Foundation
°C Degrees Centigrade
CCP Composite Correction Program
CDC Centers for Disease Control and Prevention
CFE Combined Filter Effluent
CFR Code of Federal Regulations
COI Cost-of-Illness
CT The Residual Concentration of Disinfectant (mg/L) Multiplied by the Contact Time (in minutes)
CWS Community Water Systems
DAPI 4',6-Diamindino-2-phenylindole
DBPs Disinfection Byproducts
DBPR Disinfectants/Disinfection Byproducts Rule
DE Diatomaceous Earth
DIC Differential Interference Contrast (microscopy)
EA Economic Analysis

EPA United States Environmental Protection Agency
GAC Granular Activated Carbon
GWUDI Ground Water Under the Direct Influence of Surface Water
HAA5 Haloacetic acids (Monochloroacetic, Dichloroacetic, Trichloroacetic, Monobromoacetic and Dibromoacetic Acids)
HPC Heterotrophic Plate Count
ICR Information Collection Request
ICRSS Information Collection Rule Supplemental Surveys
ICRSSM Information Collection Rule Supplemental Survey of Medium Systems
ICRSSL Information Collection Rule Supplemental Survey of Large Systems
IESWTR Interim Enhanced Surface Water Treatment Rule
IFA Immunofluorescence Assay
Log Logarithm (common, base 10)
LRAA Locational Running Annual Average
LRV Log Removal Value
LT1ESWTR Long Term 1 Enhanced Surface Water Treatment Rule
LT2ESWTR Long Term 2 Enhanced Surface Water Treatment Rule
MCL Maximum Contaminant Level
MCLG Maximum Contaminant Level Goal
MGD Million Gallons per Day
M–DBP Microbial and Disinfectants/Disinfection Byproducts
MF Microfiltration
NCWS Non-community water systems
NF Nanofiltration
NODA Notice of Data Availability
NPDWR National Primary Drinking Water Regulation
NTNCWS Non-transient Non-community Water System
NTTAA National Technology Transfer and Advancement Act
NTU Nephelometric Turbidity Unit
OMB Office of Management and Budget
PE Performance Evaluation
PWS Public Water System
QC Quality Control
QCRV Quality Control Release Value
RAA Running Annual Average
RFA Regulatory Flexibility Act
RO Reverse Osmosis
RSD Relative Standard Deviation
SAB Science Advisory Board
SBAR Small Business Advocacy Review
SERs Small Entity Representatives
SDWA Safe Drinking Water Act
SWTR Surface Water Treatment Rule
TCR Total Coliform Rule
TTHM Total Trihalomethanes
TNCWS Transient Non-community Water Systems
UF Ultrafiltration
UMRA Unfunded Mandates Reform Act

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I. Summary

A. Why Is EPA Proposing the LT2ESWTR?

EPA is proposing the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) to provide for increased protection against microbial pathogens in public water systems that use surface water sources. The proposed LT2ESWTR focuses on *Cryptosporidium*, which is a protozoan pathogen that is widespread in surface water. EPA is particularly concerned about *Cryptosporidium* because it is highly resistant to inactivation by standard disinfection practices like chlorination. Ingestion of *Cryptosporidium* oocysts can cause acute gastrointestinal illness, and health effects in sensitive subpopulations may be severe, including risk of mortality. *Cryptosporidium* has been identified as the pathogenic agent in a number of waterborne disease outbreaks across the U.S. and in Canada (details in section II).

The intent of the LT2ESWTR is to supplement existing microbial treatment requirements for systems where additional public health protection is needed. Currently, the Interim Enhanced Surface Water Treatment Rule (IESWTR) requires large systems that filter to remove at least 99% (2 log) of *Cryptosporidium* (63 FR 69478, December 16, 1998) (USEPA 1998a). The Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) extends this requirement to small systems (67 FR 1812, January 14, 2002) (USEPA 2002a). Subsequent to promulgating these regulations, EPA has evaluated significant new data on *Cryptosporidium* infectivity, occurrence, and treatment (details in section III). These data indicate that current treatment requirements achieve adequate protection for the majority of systems, but there is a subset of systems with higher vulnerability to *Cryptosporidium* where additional treatment is necessary.

Specifically, national survey data show that average *Cryptosporidium* occurrence in filtered systems is lower than previously estimated. However, these data also demonstrate that *Cryptosporidium* concentrations vary widely among systems, and that a fraction of filtered systems have relatively high levels of source water *Cryptosporidium* contamination. Based on this finding, along with new data suggesting that the infectivity (*i.e.*, virulence) of *Cryptosporidium* may be substantially higher than previously understood, EPA has concluded that the current 2 log removal requirement does not provide an adequate degree of treatment in filtered systems with the highest source water *Cryptosporidium* levels. Consequently, EPA is proposing targeted additional treatment requirements under the LT2ESWTR for filtered systems with the highest *Cryptosporidium* risk.

Under current regulations, unfiltered systems are not required to provide any treatment for *Cryptosporidium*. New occurrence data suggest that typical *Cryptosporidium* levels in the treated water of unfiltered systems are substantially higher than in the treated water of filtered systems. Hence, *Cryptosporidium* treatment by unfiltered systems is needed to achieve equivalent public health protection. Recent treatment studies have allowed EPA to develop criteria for systems to inactivate *Cryptosporidium* with ozone, ultraviolet (UV) light, and chlorine dioxide. As a result, EPA has concluded that it is feasible and appropriate to propose under the LT2ESWTR that all unfiltered systems treat for *Cryptosporidium*.

In addition to concern with *Cryptosporidium*, the LT2ESWTR proposal is intended to ensure that systems maintain adequate protection against microbial pathogens as they take steps to reduce formation of disinfection byproducts (DBPs). Along with the LT2ESWTR, EPA is also developing a Stage 2 Disinfection Byproducts Rule (DBPR), which will further limit allowable levels of trihalomethanes and haloacetic acids. The proposed LT2ESWTR contains disinfection profiling and benchmarking requirements to ensure that microbial protection is maintained as systems comply with the Stage 2 DBPR. Also in the proposed LT2ESWTR are requirements to limit risk associated with existing uncovered finished water storage facilities. Uncovered storage facilities are subject to contamination if not properly managed or treated.

Today's proposed LT2ESWTR reflects consensus recommendations from the Stage 2 Microbial and Disinfection Byproducts (M–DBP) Federal Advisory Committee. These recommendations are set forth in the Stage 2 M–DBP Agreement in Principle (65 FR 83015, December 29, 2000) (USEPA 2000a).

B. What Does the LT2ESWTR Proposal Require?

1. Treatment Requirements for *Cryptosporidium*

EPA is proposing risk-targeted treatment technique requirements for *Cryptosporidium* control in filtered systems that are based on a microbial framework approach. Under this approach, systems that use a surface water or ground water under the direct influence of surface water (referred to collectively as surface water systems) will conduct source water monitoring to determine an average *Cryptosporidium* concentration. Based on monitoring results, filtered systems will be classified in one of four possible risk categories (bins). A filtered system's bin classification determines the extent of any additional *Cryptosporidium* treatment requirements beyond the requirements of current regulations.

EPA expects that the majority of filtered systems will be classified in the Bin 1, which carries no additional treatment requirements. Those systems classified Bins 2–4 will be required to provide from 1.0 to 2.5 log of treatment (*i.e.*, 90 to 99.7 percent reduction) for *Cryptosporidium* in addition to conventional treatment that complies with the IESWTR or LT1ESWTR (details in section IV.A). Filtered systems will meet additional *Cryptosporidium* treatment requirements by using one or more treatment or control steps from a ''microbial toolbox'' of options (details in section IV.C). Rather than monitoring, filtered systems may elect to comply with the treatment requirements of Bin 4 directly.

Under the proposed LT2ESWTR, all surface water systems that are not required to filter (*i.e.*, unfiltered systems) must provide at least 2 log (*i.e.*, 99 percent) inactivation of *Cryptosporidium*. In addition, unfiltered systems will monitor for *Cryptosporidium* in their source water and must achieve at least 3 log (*i.e.*, 99.9 percent) inactivation of *Cryptosporidium* if the mean level exceeds 0.01 oocysts/L. Alternatively, unfiltered systems may elect to provide 3 log *Cryptosporidium* inactivation directly, instead of monitoring. All requirements established under the Surface Water Treatment Rule (SWTR) (54 FR 27486, June 29, 1989) (USEPA 1989a) for unfiltered systems will remain in effect, including 3 log inactivation of *Giardia lamblia* and 4 log inactivation of viruses. However, the LT2ESWTR proposal requires that unfiltered systems achieve their overall inactivation requirements using a

minimum of two disinfectants (details in section IV.B).

2. Disinfection Profiling and Benchmarking

The purpose of disinfection profiling and benchmarking is to ensure that when a system makes a significant change to its disinfection practice, it does not compromise the adequacy of existing microbial protection. EPA established the disinfection benchmark under the IESWTR and LT1ESWTR for the Stage 1 M–DBP rules, and the LT2ESWTR proposal extends disinfection benchmark requirements to apply to the Stage 2 M–DBP rules.

The proposed profiling and benchmarking requirements are similar to those promulgated under IESWTR and LT1ESWTR. Systems that meet specified criteria must prepare disinfection profiles that characterize current levels of virus and *Giardia lamblia* inactivation over the course of one year. Systems with valid operational data from profiling conducted under the IESWTR or LT1ESWTR are not required to collect additional data. If a system that is required to prepare a profile proposes to make a significant change to its disinfection practice, the system must calculate a disinfection benchmark and must consult with the State regarding how the proposed change will affect the current benchmark (details in section IV.D).

3. Uncovered Finished Water Storage Facilities

The proposed LT2ESWTR also includes requirements for systems with uncovered finished water storage facilities. The IESWTR and LT1ESWTR require systems to cover all new storage facilities for finished water, but these rules do not address existing uncovered finished water storage facilities. Under the LT2ESWTR proposal, systems with uncovered finished water storage facilities must cover the storage facility or treat the storage facility discharge to achieve 4 log virus inactivation unless the State determines that existing risk mitigation is adequate. Where the State makes such a determination, systems must develop and implement a risk mitigation plan that addresses physical access, surface water run-off, animal and bird wastes, and on-going water quality assessment (details in section IV.E).

C. Will This Proposed Regulation Apply to My Water System?

All community and non-community water systems that use surface water or ground water under the direct influence of surface water are affected by the proposed LT2ESWTR.

II. Background

A. What Is the Statutory Authority for the LT2ESWTR?

This section discusses the Safe Drinking Water Act (SDWA or the Act) sections that direct the development of the LT2ESWTR.

The Act, as amended in 1996, requires EPA to publish a maximum contaminant level goal (MCLG) and promulgate a national primary drinking water regulation (NPDWR) with enforceable requirements for any contaminant that the Administrator determines may have an adverse effect on the health of persons, is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems (PWSs) with a frequency and at levels of public health concern, and for which in the sole judgement of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by PWSs (section 1412 (b)(1)(A)).

MCLGs are non-enforceable health goals, and are to be set at a level at which no known or anticipated adverse effect on the health of persons occur and which allows an adequate margin of safety (sections 1412(b)(4) and 1412(a)(3)). EPA established an MCLG of zero for *Cryptosporidium* under the IESWTR (63 FR 69478, December 16, 1998) (USEPA 1998a). The Agency is not proposing any changes to the current MCLG for *Cryptosporidium*.

The Act also requires that at the same time EPA publishes an NPDWR and MCLG, it must specify in the NPDWR a maximum contaminant level (MCL) which is as close to the MCLG as is feasible (sections 1412(b)(4) and 1401(1)(c)). The Agency is authorized to promulgate an NPDWR that requires the use of a treatment technique in lieu of establishing an MCL if the Agency finds that it is not economically or technologically feasible to ascertain the level of the contaminant (sections 1412(b)(7)(A) and 1401(1)(C)). The Act specifies that in such cases, the Agency shall identify those treatment techniques that would prevent known or anticipated adverse effects on the health of persons to the extent feasible (section 1412(b)(7)(A)).

The Agency has concluded that it is not currently economically or technologically feasible for PWSs to determine the level of *Cryptosporidium* in finished drinking water for the purpose of compliance with a finished water standard (the performance of available analytical methods for *Cryptosporidium* is described in section III.C; the treated water *Cryptosporidium* levels that the LT2ESWTR will achieve are described in section IV.A). Consequently, today's proposal for the LT2ESWTR relies on treatment technique requirements to reduce health risks from *Cryptosporidium* in PWSs.

When proposing a NPDWR that includes an MCL or treatment technique, the Act requires EPA to publish and seek public comment on an analysis of health risk reduction and cost impacts. This includes an analysis of quantifiable and nonquantifiable costs and health risk reduction benefits, incremental costs and benefits of each alternative considered, the effects of the contaminant upon sensitive subpopulations (*e.g.*, infants, children, pregnant women, the elderly, and individuals with a history of serious illness), any increased risk that may occur as the result of compliance, and other relevant factors (section 1412 (b)(3)(C)). EPA's analysis of health benefits and costs associated with the proposed LT2ESWTR is presented in ''Economic Analysis of the LT2ESWTR'' (USEPA 2003a) and is summarized in section VI of this preamble. However, the Act does not authorize the Administrator to use additional health risk reduction and cost considerations to establish MCL or treatment technique requirements for the control of *Cryptosporidium* (section 1412 (b)(6)(C)).

Finally, section 1412 (b)(2)(C) of SDWA requires EPA to promulgate a Stage 2 Disinfectants and Disinfection Byproducts Rule within 18 months after promulgation of the LT1ESWTR, which occurred on January 14, 2002. Consistent with statutory requirements for risk balancing (section 1412(b)(5)(B)), EPA will finalize the LT2ESWTR with the Stage 2 DBPR to ensure parallel protection from microbial and DBP risks.

B. What Current Regulations Address Microbial Pathogens in Drinking Water?

This section summarizes the existing regulations that apply to control of pathogenic microorganisms in surface water systems. These rules form the baseline of regulatory protection that will be supplemented by the LT2ESWTR.

1. Surface Water Treatment Rule

The SWTR (54 FR 27486, June 29, 1989) (USEPA 1989a) applies to all PWSs using surface water or ground water under the direct influence (GWUDI) of surface water as sources (Subpart H systems). It established

MCLGs of zero for *Giardia lamblia*, viruses, and Legionella, and includes treatment technique requirements to reduce exposure to pathogenic microorganisms, including: (1) Filtration, unless specified avoidance criteria are met; (2) maintenance of a disinfectant residual in the distribution system; (3) removal and/or inactivation of 3 log (99.9%) of *Giardia lamblia* and 4 log (99.99%) of viruses; (4) combined filter effluent turbidity of 5 nephelometric turbidity units (NTU) as a maximum and 0.5 NTU at 95th percentile monthly for treatment plants using conventional treatment or direct filtration (with separate standards for other filtration technologies); and (5) watershed protection and source water quality requirements for unfiltered systems.

2. Total Coliform Rule

The Total Coliform Rule (TCR) (54 FR 27544, June 29, 1989) (USEPA 1989b) applies to all PWSs. It established an MCLG of zero for total and fecal coliform bacteria, and an MCL based on the percentage of positive samples collected during a compliance period. Coliforms are used as a screen for fecal contamination and to determine the integrity of the water treatment process and distribution system. Under the TCR, no more than 5 percent of distribution system samples collected in any month may contain coliform bacteria (no more than 1 sample per month may be coliform positive in those systems that collect fewer than 40 samples per month). The number of samples to be collected in a month is based on the number of people served by the system.

3. Interim Enhanced Surface Water Treatment Rule

The IESWTR (63 FR 69477, December 16, 1998) (USEPA 1998a) applies to PWSs serving at least 10,000 people and using surface water or GWUDI sources. Key provisions established by the IESWTR include the following: (1) An MCLG of zero for *Cryptosporidium*; (2) *Cryptosporidium* removal requirements of 2 log (99 percent) for systems that filter; (3) strengthened combined filter effluent turbidity performance standards of 1.0 NTU as a maximum and 0.3 NTU at the 95th percentile monthly for treatment plants using conventional treatment or direct filtration; (4) requirements for individual filter turbidity monitoring; (5) disinfection benchmark provisions to assess the level of microbial protection provided as facilities take steps to comply with new DBP standards; (6) inclusion of *Cryptosporidium* in the definition of GWUDI and in the watershed control requirements for unfiltered public water systems; (7) requirements for covers on new finished water storage facilities; and (8) sanitary surveys for all surface water systems regardless of size.

The IESWTR was developed in conjunction with the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) (63 FR 69389; December 16, 1998) (USEPA 1998b), which reduced allowable levels of certain DBPs, including trihalomethanes, haloacetic acids, chlorite, and bromate.

4. Long Term 1 Enhanced Surface Water Treatment Rule

The LT1ESWTR (67 FR 1812, January 14, 2002) (USEPA 2002a) builds upon the microbial control provisions established by the IESWTR for large systems, through extending similar requirements to small systems. The LT1ESWTR applies to PWSs using surface water or GWUDI as sources that serve fewer than 10,000 people. Like the IESWTR, the LT1ESWTR established the following: 2 log (99 percent) *Cryptosporidium* removal requirements for systems that filter; individual filter turbidity monitoring and more stringent combined filter effluent turbidity standards for conventional and direct filtration plants; disinfection profiling and benchmarking; inclusion of *Cryptosporidium* in the definition of GWUDI and in the watershed control requirements for unfiltered systems; and the requirement that new finished water storage facilities be covered.

5. Filter Backwash Recycle Rule

EPA promulgated the Filter Backwash Recycling Rule (FBRR) (66 FR 31085, June 8, 2001) (USEPA 2001a) to increase protection of finished drinking water supplies from contamination by *Cryptosporidium* and other microbial pathogens. The FBRR requirements will reduce the potential risks associated with recycling contaminants removed during the filtration process. The FBRR provisions apply to all systems that recycle, regardless of population served. In general, the provisions include the following: (1) Recycling systems must return certain recycle streams prior to the point of primary coagulant addition unless the State specifies an alternative location; (2) direct filtration systems recycling to the treatment process must provide detailed recycle treatment information to the State; and (3) certain conventional systems that practice direct recycling must perform a one-month, one-time recycling self assessment.

C. What Public Health Concerns Does This Proposal Address?

This section presents the basis for the public health concern associated with *Cryptosporidium* in drinking water by summarizing information on *Cryptosporidium* health effects and outbreaks. This is followed by a description of the specific areas of public health concern that remain after implementation of the IESWTR and LT1ESWTR and that are addressed in the LT2ESWTR proposal. More detailed information about *Cryptosporidium* health effects may be found in the following criteria documents: *Cryptosporidium*: Human Health Criteria Document (USEPA 2001b), *Cryptosporidium*: Drinking Water Advisory (USEPA 2001c), and *Cryptosporidium*: Risks for Infants and Children (USEPA 2001d).

1. Introduction

While modern water treatment systems have substantially reduced waterborne disease incidence, drinking water contamination remains a significant health risk management challenge. EPA's Science Advisory Board in 1990 cited drinking water contamination, particularly contamination by pathogenic microorganisms, as one of the most important environmental risks (USEPA 1990). This risk is underscored by information from the Centers for Disease Control and Prevention (CDC) which indicates that between 1980 and 1998 a total of 419 outbreaks associated with drinking water were reported, with greater than 511,000 estimated cases of disease. A number of agents were implicated in these outbreaks, including viruses, bacteria, and protozoa, as well as several chemicals (Craun and Calderon 1996, Levy *et al.* 1998, Barwick *et al.* 2000). The majority of cases were associated with surface water, and specifically with the 1993 *Cryptosporidium* outbreak in Milwaukee, WI with an estimated 403,000 cases (Mac Kenzie *et al.* 1994). A recent study by McDonald *et al.* (2001), which used blood samples from Milwaukee children collected during and after the 1993 outbreak, suggests that *Cryptosporidium* infection, including asymptomatic infection, was more widespread than might be inferred from the illness estimates by Mac Kenzie *et al.* (1994).

It is important to note that the number of identified and reported outbreaks in the CDC database is believed to substantially understate the actual incidence of waterborne disease outbreaks and cases (Craun and

Calderon 1996, National Research Council 1997). This under reporting is due to a number of factors. Many people experiencing gastrointestinal illness do not seek medical attention. Where medical attention is provided, the pathogenic agent may not be identified through routine testing. Physicians often lack sufficient information to attribute gastrointestinal illness to any specific origin, such as drinking water, and few States have an active outbreak surveillance program. Consequently, outbreaks are often not recognized in a community or, if recognized, are not traced to a drinking water source.

In addition, an unknown but probably significant portion of waterborne disease is endemic (*i.e.* isolated cases not associated with an outbreak) and, thus, is even more difficult to recognize. The Economic Analysis for the proposed LT2ESWTR (USEPA 2003a) uses data on *Cryptosporidium* occurrence, infectivity, and treatment to estimate the baseline endemic incidence of cryptosporidiosis attributable to drinking water, as well as the reductions projected as a result of this rule.

Most waterborne pathogens cause gastrointestinal illness with diarrhea, abdominal discomfort, nausea, vomiting, and other symptoms. The effects of waterborne disease are usually acute, resulting from a single or small number of exposures. Such illnesses are generally of short duration in healthy people. However, some pathogens, including *Giardia lamblia* and *Cryptosporidium*, may cause disease lasting weeks or longer in otherwise healthy individuals, though this is not typical for *Cryptosporidium*. Waterborne pathogens also cause more serious disorders such as hepatitis, peptic ulcers, myocarditis, paralysis, conjunctivitis, swollen lymph glands, meningitis, and reactive arthritis, and have been associated with diabetes, encephalitis, and other diseases (Lederberg 1992).

There are populations that are at greater risk from waterborne disease. These sensitive subpopulations include children (especially infants), the elderly, the malnourished, pregnant women, the disease impaired (*e.g.*, diabetes, cystic fibrosis), and a broad category of those with compromised immune systems, such as AIDS patients, those with autoimmune disorders (*e.g.*, rheumatoid arthritis, lupus erythematosus, multiple sclerosis), transplant recipients, and those on chemotherapy (Rose 1997). This sensitive segment represents almost 20% of the population in the United States (Gerba *et al.* 1996). The severity and duration of illness is often greater in sensitive subpopulations than in healthy individuals, and in a small percentage of such cases, death may result.

2. *Cryptosporidium* Health Effects and Outbreaks

Cryptosporidium is a protozoan parasite that exists in warm-blooded hosts and, upon excretion, may survive for months in the environment (Kato *et al.*, 2001). Ingestion of *Cryptosporidium* can lead to cryptosporidiosis, a gastrointestinal illness. Transmission of cryptosporidiosis often occurs through consumption of feces contaminated food or water, but may also result from direct or indirect contact with infected persons or animals (Casemore 1990). Surveys (described in Section III) indicate that *Cryptosporidium* is common in surface waters used as drinking water supplies. Sources of *Cryptosporidium* contamination include animal agriculture, wastewater treatment plant discharges, slaughterhouses, birds, wild animals, and other sources of fecal matter.

EPA is particularly concerned about *Cryptosporidium* because, unlike pathogens such as bacteria and most viruses, *Cryptosporidium* oocysts are highly resistant to standard disinfectants like chlorine and chloramines. Consequently, control of *Cryptosporidium* in most treatment plants is dependent on physical removal processes. Finished water monitoring data indicate that *Cryptosporidium* is sometimes present in filtered, treated drinking water (LeChevallier *et al.* 1991; Aboytes *et al.* 2002). Moreover, as noted later, many of the individuals sickened by waterborne outbreaks of cryptosporidiosis were served by filtered surface water supplies (Solo-Gabriele and Neumeister, 1996). In some cases, these outbreaks were attributed to treatment deficiencies, while in other cases the cause was unidentified (see Table II–1).

These data suggest that surface water systems that filter and disinfect may still be vulnerable to *Cryptosporidium*, depending on the source water quality and treatment effectiveness. Today's proposed rule addresses concern with passage of *Cryptosporidium* through physical removal processes during water treatment, as well as in systems lacking filtration.

a. *Health effects. Cryptosporidium* infection is characterized by mild to severe diarrhea, dehydration, stomach cramps, and/or a slight fever. Symptoms typically last from several days to two weeks, though in a small percentage of cases, the symptoms may persist for months or longer in otherwise healthy individuals. Human feeding studies have demonstrated that a low dose of *Cryptosporidium parvum* (C. parvum) is sufficient to cause infection in healthy adults (DuPont *et al.* 1995, Chappell *et al.* 1999, Messner *et al.* 2001). Studies of immunosuppressed adult mice have demonstrated that a single viable oocyst can induce patent C. parvum infections (Yang *et al.* 2000).

There is evidence that an immune response to *Cryptosporidium* exists, but the degree and duration of this immunity is not well characterized. In a study by Chappell *et al.* (1999), individuals with a blood serum antibody (IgG), which can develop from exposure to C. parvum, demonstrated immunity to low doses of oocysts. The investigators found the ID50 dose (*i.e.*, dose that infects 50% of the challenged population) of one C. parvum isolate for adult volunteers who had pre-existing serum IgG to be 1,880 oocysts in comparison to 132 oocysts for individuals reported as serologically negative. However, the implications of these data for studies of *Cryptosporidium* infectivity are unclear. Earlier work did not observe a correlation between the development of antibodies after *Cryptosporidium* exposure and subsequent protection from illness (Okhuysen *et al.* 1998). A subsequent investigation by Muller *et al.* (2001) observed serological responses to *Cryptosporidium* antigens in samples from individuals reported by Chappel *et al.* as serologically negative.

Cryptosporidium parvum was first recognized as a human pathogen in 1976 (Juranek 1995). Cases of illness from *Cryptosporidium* were rarely reported until 1982 when documented disease incidence increased due to the AIDS epidemic (Current 1983). As laboratory diagnostic techniques improved during subsequent years, outbreaks among immunocompetent persons were recognized as well. Human, cattle, dog and deer types of C. parvum have been found in healthy individuals (Ong *et al.* 2002, Morgan-Ryan *et al.* 2002). Other *Cryptosporidium* species (C. felis, C. meleagridis, and possibly C. muris) have infected healthy individuals, primarily children (Xiao *et al.* 2001, Chalmers *et al.* 2002, Katsumata *et al.* 2000). Cross-species infection occurs. The human type of C. parvum (now named C. hominis (Morgan-Ryan *et al.* 2002)) has infected a dugong and monkeys (Spano *et al.* 1998). The cattle type of C. parvum infects humans, wild animals, and other livestock, such as sheep, goats and deer (Ong *et al.* 2002).

As noted earlier, there are sensitive populations that are at greater risk from pathogenic microorganisms.

Cryptosporidiosis symptoms in immunocompromised subpopulations are much more severe, including debilitating voluminous diarrhea that may be accompanied by severe abdominal cramps, weight loss, and low grade fever (Juranek 1995). Mortality is a significant threat to the immunocompromised infected with *Cryptosporidium*:

> the duration and severity of the disease are significant: whereas 1 percent of the immunocompetent population may be hospitalized with very little risk of mortality, *Cryptosporidium* infections are associated with a high rate of mortality in the immunocompromised (Rose 1997)

A follow-up study of the 1993 Milwaukee, WI outbreak reported that at least 50 *Cryptosporidium*-associated deaths occurred among the severely immunocompromised (Hoxie *et al.* 1997).

b. *Waterborne cryptosporidiosis outbreaks. Cryptosporidium* has caused a number of waterborne disease outbreaks since 1984 when the first one was reported in the U.S. Table II–1 lists reported outbreaks in community water systems (CWS) and non-community water systems (NCWS). Between 1984—1998, nine outbreaks caused by *Cryptosporidium* were reported in the U.S. with approximately 421,000 cases associated cases of illness (CDC 1993, 1996, 1998, 2000, and 2001). Solo-Gabriele and Neumeister (1996) characterized water supplies associated with U.S. outbreaks of cryptosporidiosis. They determined that almost half of the outbreaks were associated with ground water (untreated or chlorinated springs and wells), but that the majority of affected individuals were served by filtered surface water supplies (rivers and lakes). They found that during outbreaks involving treated spring or well water, the chlorination systems were apparently operating satisfactorily, with a measurable chlorine residual.

Although the occurrence of *Cryptosporidium* in U.S. drinking water supplies has been substantiated by data collected during outbreak investigations, the source and density of oocysts associated with the outbreak have not always been detected or reported. Furthermore, because of limitations and uncertainties of the immunofluorescence assay (IFA) method used in earlier studies, negative results in source or finished water during these outbreaks do not necessarily mean that there were no oocysts in the water at the time of sampling.

TABLE II–1.—OUTBREAKS CAUSED BY *Cryptosporidium* IN PUBLIC WATER SYSTEMS: 1984–1998

Year	State	Cases	System	Deficiency	Source
1984	TX	117	CWS	3	Well.
1987	GA	13,000	CWS	3	River.
1991	PA	551	NCWS	3	Well.
1992	OR	††	CWS	3	Spring.
1992	OR	††	CWS	3	River.
1993	NV	103	CWS	5	Lake.
1993	WI	403,000	CWS	3	Lake.
1994	WA	134	CWS	2	Well.
1998	TX	1,400	CWS	3	Well.

†† =Total estimated cases were 3,000. The locations were nearby and cases overlapped in time Definitions of deficiencies = (1) untreated surface water; (2) untreated ground water; (3) treatment deficiency (*e.g.*, temporary interruption of disinfection, chronically inadequate disinfection, and inadequate or no filtration); (4) distribution system deficiency (*e.g.*, cross connection, contamination of water mains during construction or repair, and contamination of a storage facility); and (5) unknown or miscellaneous deficiency.

3. Remaining Public Health Concerns Following the IESWTR and LT1ESWTR

This section presents the areas of remaining public health concern following implementation of the IESWTR and LT1ESWTR that EPA proposes to address in the LT2ESWTR. These are as follows: (a) Adequacy of physical removal to control *Cryptosporidium* and the need for risk based treatment requirements; (b) control of *Cryptosporidium* in unfiltered systems; and (c) uncovered finished water storage facilities.

EPA recognized each of these issues as a potential public health concern during development of the IESWTR, but could not address them at that time due to the absence of key data. Accordingly, this section begins with a description of how EPA considered these issues during development of the IESWTR, including the data gaps that were identified at that time. This is followed by a statement of the extent to which new information has filled these data gaps, thereby allowing EPA to address these public health concerns in the LT2ESWTR proposal.

a. *Adequacy of physical removal to control Cryptosporidium and the need for risk based treatment requirements.* A question that received significant consideration during development of the IESWTR is whether physical removal by filtration plants provides adequate protection against *Cryptosporidium* in drinking water, or whether certain systems should be required to provide inactivation of *Cryptosporidium* based on source water pathogen levels. As discussed in the proposal, notice of data availability (NODA), and final IESWTR, EPA and stakeholders concluded that data available during IESWTR development were not adequate to support risk based inactivation requirements for *Cryptosporidium*. However, the Agency maintained that a risk based approach to *Cryptosporidium* control would be considered for the LT2ESWTR when data collected under the Information Collection Rule were available and other critical information needs had been addressed.

The IESWTR proposal (59 FR 38832, July 29, 1994) (USEPA 1994) included two treatment alternatives, labeled B and C, that specifically addressed *Cryptosporidium*. Under Alternative B, the level of required treatment would be based on the density of *Cryptosporidium* in the source water. The proposal noted concerns with this approach, though, due to uncertainty in the risk associated with *Cryptosporidium* and the feasibility of achieving higher treatment levels through disinfection. Consequently, EPA also proposed Alternative C, which would require 2 log (99%) removal of *Cryptosporidium* by filtration. This was based on the determination that 2 log *Cryptosporidium* removal is feasible using conventional treatment.

In the 1996 Information Collection Rule (61 FR 24354, May 14, 1996) (USEPA 1996a), EPA concluded that the analytical method prescribed for measuring *Cryptosporidium* was

adequate for making national occurrence estimates, but would not suffice for making site specific source water density estimates. This finding further contributed to the rationale supporting Alternative C under the proposed IESWTR.

The NODA for the IESWTR (62 FR 59498, Nov. 3, 1997) (USEPA 1997a) presented the recommendations of the Stage 1 MDBP Federal Advisory Committee for the IESWTR. As stated in the NODA, the Committee engaged in extensive discussions regarding the adequacy of relying solely on physical removal to control *Cryptosporidium* and the need for inactivation. There was an absence of consensus on whether it was possible at that time to adequately measure *Cryptosporidium* inactivation efficiencies for various disinfection technologies. This was a significant impediment to addressing inactivation in the IESWTR. However, the Committee recognized that inactivation requirements may be necessary under future regulatory scenarios, as shown by the following consensus recommendation from the Stage 1 MDBP Agreement in Principle:

> EPA should issue a risk based proposal of the Final Enhanced Surface Water Treatment Rule for *Cryptosporidium* embodying the multiple barrier approach (*e.g.*, source water protection, physical removal, inactivation, etc.), including, where risks suggest appropriate, inactivation requirements (62 FR 59557, Nov. 3, 1997) (USEPA 1997a).

The preamble to the final IESWTR (63 FR 69478, Dec. 16, 1998) (USEPA 1998a) states that EPA was unable to consider the proposed Alternative B (treatment requirements for *Cryptosporidium* based on source water occurrence levels) for the IESWTR because occurrence data from the Information Collection Rule survey and related analysis were not available in time to meet the statutory promulgation deadline. The Agency affirmed, though, that further control of *Cryptosporidium* would be addressed in the LT2ESWTR.

In today's notice, EPA is proposing a risk based approach for control of *Cryptosporidium* in drinking water. Under this approach, the required level of additional *Cryptosporidium* treatment relates to the source water pathogen density. EPA believes many of the data gaps that prevented the adoption of this approach under the IESWTR have been addressed. As described in Section III of this preamble, information on *Cryptosporidium* occurrence from the Information Collection Rule and Information Collection Rule Supplemental Surveys, along with new data on *Cryptosporidium* infectivity, have provided EPA with a better understanding of the magnitude and distribution of risk for this pathogen. Improved analytical methods allow for a more accurate assessment of source water *Cryptosporidium* levels, and recent disinfection studies with UV, ozone, and chlorine dioxide provide the technical basis to support *Cryptosporidium* inactivation requirements.

b. *Control of Cryptosporidium in unfiltered systems.* There is particular concern about *Cryptosporidium* in the source waters of unfiltered systems because this pathogen has been shown to be resistant to conventional disinfection practices. In the IESWTR, EPA extended watershed control requirements for unfiltered systems to include the control of *Cryptosporidium*. EPA did not establish *Cryptosporidium* treatment requirements for unfiltered systems because available data suggested an equivalency of risk in filtered and unfiltered systems. This is described in the final IESWTR as follows:

> it appears that unfiltered water systems that comply with the source water requirements of the SWTR have a risk of cryptosporidiosis equivalent to that of a water system with a well operated filter plant using a water source of average quality (63 FR 69492, Dec. 16, 1998) (USEPA 1998a)

The Agency noted that data from the Information Collection Rule would provide more information on *Cryptosporidium* levels in filtered and unfiltered systems, and that *Cryptosporidium* treatment requirements would be re-evaluated when these data became available.

In today's notice, EPA is proposing *Cryptosporidium* inactivation requirements for unfiltered systems. These proposed requirements stem from an assessment of *Cryptosporidium* source water occurrence in both filtered and unfiltered systems using data from the Information Collection Rule and other surveys, as described in Section III of this preamble. These new data do not support the finding described in the IESWTR of equivalent risk in filtered and unfiltered systems. Rather, *Cryptosporidium* treatment by unfiltered systems is necessary to achieve a finished water risk level equivalent to that of filtered systems. In addition, the development of *Cryptosporidium* inactivation criteria for UV, ozone, and chlorine dioxide in the LT2ESWTR has made it feasible for unfiltered systems to provide *Cryptosporidium* treatment.

c. *Uncovered finished water storage facilities.* In the IESWTR proposal, EPA solicited comment on a requirement that systems cover finished water storage facilities to reduce the potential for contamination by pathogens and hazardous chemicals. Potential sources of contamination to uncovered storage facilities include airborne chemicals, runoff, animal carcasses, animal or bird droppings, and growth of algae and other aquatic organisms (59 FR 38832, July 29, 1994) (USEPA 1994).

The final IESWTR established a requirement to cover all new storage facilities for finished water for which construction began after February 16, 1999 (63 FR 69493, Dec. 16, 1998) (USEPA 1998a). In preamble to the final IESWTR, EPA described future regulation of existing uncovered finished water storage facilities as follows:

> EPA needs more time to collect and analyze additional information to evaluate regulatory impacts on systems with existing uncovered reservoirs on a national basis . . . EPA will further consider whether to require the covering of existing reservoirs during the development of subsequent microbial regulations when additional data and analysis to develop the national costs of coverage are available.

EPA continues to be concerned about contamination resulting from uncovered finished water storage facilities, particularly the potential for virus contamination via bird droppings, and now has sufficient data to estimate national cost implications for various regulatory control strategies. Therefore, EPA is proposing control measures for all systems with uncovered finished water storage facilities in the LT2ESWTR. New data and proposed requirements are described in section IV.E of this preamble.

D. Federal Advisory Committee Process

In March 1999, EPA reconvened the M–DBP Federal Advisory Committee to develop recommendations for the Stage 2 DBPR and LT2ESWTR. The Committee consisted of organizational members representing EPA, State and local public health and regulatory agencies, local elected officials, Indian Tribes, drinking water suppliers, chemical and equipment manufacturers, and public interest groups. Technical support for the Committee's discussions was provided by a technical workgroup established by the Committee at its first meeting. The Committee's activities resulted in the collection and evaluation of substantial new information related to key elements for both rules. This included new data on pathogenicity, occurrence, and treatment of microbial contaminants, specifically including *Cryptosporidium*, as well as new data on DBP health risks, exposure, and control. New information relevant to the

LT2ESWTR is summarized in Section III of this proposal.

In September 2000, the Committee signed an Agreement in Principle reflecting the consensus recommendations of the group. The Agreement was published in a December 29, 2000 **Federal Register** notice (65 FR 83015, December 29, 2000) (USEPA 2000a). The Agreement is divided into Parts A & B. The entire Committee reached consensus on Part A, which contains provisions that directly apply to the Stage 2 DBPR and LT2ESWTR. The full Committee, with the exception of one member, agreed to Part B, which has recommendations for future activities by EPA in the areas of distribution systems and microbial water quality criteria.

The Committee reached agreement on the following major issues discussed in this notice and the proposed Stage 2 DBPR:

LT2ESWTR: (1) Additional *Cryptosporidium* treatment based on source water monitoring results; (2) Filtered systems that must comply with additional *Cryptosporidium* treatment requirements may choose from a ''toolbox'' of treatment and control options; (3) Reduced monitoring burden for small systems; (4) Future monitoring to confirm source water quality assessments; (5) *Cryptosporidium* inactivation by all unfiltered systems; (6) Unfiltered systems meet overall inactivation requirements using a minimum of 2 disinfectants; (7) Development of criteria and guidance for UV disinfection and other toolbox options; (8) Cover or treat existing uncovered finished water reservoirs (*i.e.*, storage facilities) or implement risk mitigation plans.

Stage 2 DBPR: (1) Compliance calculation for total trihanomethanes (TTHM) and five haloacetic acids (HAA5) revised from a running annual average (RAA) to a locational running annual average (LRAA); (2) Compliance carried out in two phases of the rule; (3) Performance of an Initial Distribution System Evaluation; (4) Continued importance of simultaneous compliance with DBP and microbial regulations; (5) Unchanged MCL for bromate.

III. New Information on *Cryptosporidium* Health Risks and Treatment

The purpose of this section is to describe information related to health risks and treatment of *Cryptosporidium* in drinking water that has become available since EPA developed the IESWTR. Much of this information was evaluated by the Stage 2 M–DBP Federal Advisory Committee when considering whether and to what degree existing microbial standards should be revised to protect public health. It serves as a basis for the recommendations made by the Advisory Committee and for provisions in today's proposed rule. This section begins with an overview of critical factors that EPA considers when evaluating regulation of microbial pathogens. New information is then presented on three key topics: *Cryptosporidium* infectivity, occurrence, and treatment.

A. Overview of Critical Factors for Evaluating Regulation of Microbial Pathogens

When proposing a national primary drinking water regulation that includes a maximum contaminant level or treatment technique, SDWA requires EPA to analyze the health risk reduction benefits and costs likely to result from alternative regulatory levels that are being considered. For assessing risk, EPA follows the paradigm described by the National Academy of Science (NRC, 1983) which involves four steps: (1) Hazard identification, (2) dose-response assessment, (3) exposure assessment, and (4) risk characterization. The application of these steps to microbial pathogens is briefly described in this section, followed by a summary of how EPA estimates the health benefits and costs of regulatory alternatives.

Hazard identification for microbial pathogens is a description of the nature, severity, and duration of the health effects stemming from infection. Under SDWA, EPA must consider health effects on the general population and on subpopulations that are at greater risk of adverse health effects. See section II.C.2 of this preamble for health effects associated with *Cryptosporidium*.

Dose-response assessment with microorganisms is commonly termed infectivity and is a description of the relationship between the number of pathogens ingested and the probability of infection. Information on *Cryptosporidium* infectivity is presented in section III.B of this preamble.

Exposure to microbial pathogens in drinking water is generally a function of the concentration of the pathogen in finished water and the volume of water ingested (exposure also occurs through secondary routes involving infected individuals). Because it is difficult to directly measure pathogens at the low levels typically present in finished water, EPA's information on pathogen exposure is primarily derived from surveys of source water occurrence. EPA estimates the concentration of pathogens in treated water by combining source water pathogen occurrence data with information on the performance of treatment plants in reducing pathogen levels. Data on the occurrence of *Cryptosporidium* are described in section III.C of this preamble and in Occurrence and Exposure Assessment for the LT2ESWTR (USEPA 2003b). *Cryptosporidium* treatment studies are described in section III.D of this preamble.

Risk characterization is the culminating step of the risk assessment process. It is a description of the nature and magnitude of risk, and characterizes strengths, weaknesses, and attendant uncertainties of the assessment. EPA's risk characterization for *Cryptosporidium* is described in Economic Analysis for the LT2ESWTR (USEPA 2003a).

Estimating the health benefits and costs that would result from a new regulatory requirement involves a number of steps, including evaluating the efficacy and cost of treatment strategies to reduce exposure to the contaminant, forecasting the number of systems that would implement different treatment strategies to comply with the regulatory standard, and projecting the reduction in exposure to the contaminant and consequent health risk reduction benefits stemming from regulatory compliance. EPA's estimates of health benefits and costs associated with the proposed LT2ESWTR are presented in Economic Analysis for the LT2ESWTR (USEPA 2003a) and are summarized in section VI of this preamble.

B. Cryptosporidium Infectivity

This section presents information on the infectivity of *Cryptosporidium* oocysts. Infectivity relates the probability of infection by *Cryptosporidium* with the number of oocysts that a person ingests, and it is used to predict the disease burden associated with different *Cryptosporidium* levels in drinking water. Information on *Cryptosporidium* infectivity comes from dose-response studies where healthy human subjects ingest different numbers of oocysts and are subsequently evaluated for signs of infection and illness.

Data from a human dose-response study of one *Cryptosporidium* isolate (the IOWA study, conducted at the University of Texas-Houston Health Science Center) had been published prior to the IESWTR (DuPont *et al.* 1995). Following IESWTR promulgation, a study of two additional isolates (TAMU and UCP) was completed and published (Okhuysen *et al.* 1999). This study also presented a

reanalysis of the IOWA study results. As described in more detail later in this section, this new study indicates that the infectivity of *Cryptosporidium* oocysts varies over a wide range. The UCP oocysts appeared less infective than those of the IOWA study while the TAMU oocysts were much more infective. Although the occurrence of these isolates among environmental oocysts is unknown, a meta-analysis of these data conducted by EPA suggests the overall infectivity of *Cryptosporidium* may be significantly greater than was estimated for the IESWTR (USEPA 2003a).

This section begins with a description of the infectivity data considered for the IESWTR. This is followed by a presentation of additional data that have been evaluated for the proposed LT2ESWTR and a characterization of the significance of these new data.

1. *Cryptosporidium* Infectivity Data Evaluated for IESWTR

Data from the IOWA study (DuPont *et al.* 1995) were evaluated for the IESWTR. In that study, 29 individuals were given single doses ranging from 30 oocysts to 1 million oocysts. This oocyst isolate was originally obtained from a naturally infected calf. Seven persons received doses above 500, and all were infected. Eleven of the twenty two individuals receiving doses of 500 or fewer were classified as infected based on oocysts detected in stool samples.

The IOWA study data were analyzed using an exponential dose-response model established by Haas *et al.* (1996) for *Cryptosporidium*:

$$\text{Probability}\{\text{Infection}/\text{Dose}\} = 1 - e^{-\text{Dose}/k}$$

Based on the maximum likelihood estimate of k (238), the probability of infection from ingesting a single oocyst (1/k) is approximately 0.4% (4 persons infected for every 1,000 who each ingest one oocyst). Based on the same estimate, the dose at which 50% of persons become infected (known as the median infectious dose or ID50) is 165.

2. New Data on *Cryptosporidium* Infectivity

A study of two additional *Cryptosporidium* isolates was conducted at the University of Texas-Houston Health Science Center (Okhuysen *et al.* 1999). One of the isolates (UCP) was originally collected from naturally infected calves. The other isolate (TAMU) was originally collected from a veterinary student who became infected during necropsy on an infected foal.

The TAMU and UCP studies were conducted with 14 and 17 subjects, respectively. Because thousands of oocysts per gram of stool can go undetected, researchers elected to use both stool test results and symptoms as markers of infection (only stool test results had been used for the IOWA study). Under this definition, two additional IOWA subjects were regarded as having been infected. As shown in Table III–1, all but two of the TAMU subjects were presumed infected and all but six of the UCP subjects were presumed infected following ingestion of the indicated oocyst doses.

TABLE III–1.—*Cryptosporidium Parvum* INFECTIVITY IN HEALTHY ADULT VOLUNTEERS

Isolate and dose (# of oocysts)	Number of subjects [1]	Number infected [1]
IOWA:		
30	5	2
100	8	4
300	3	2
500	6	5
1,000	2	2
10,000	3	3
100,000	1	1
1,000,000	1	1
TAMU:		
10	3	2
30	3	2
100	3	3
500	5	5
UCP:		
500	5	3
1,000	3	2
5,000	5	2
10,000	4	4

[1] The two right columns list the number of subjects belonging to each category.

EPA conducted a meta-analysis of these results in which the three isolates were considered as a random sample (of size three) from a larger population of environmental oocysts (Messner *et al.* 2001). This meta analysis was reviewed by the Science Advisory Board (SAB). In written comments from a December 2001 meeting of the Drinking Water Committee, SAB members recommended the following: (1) two assumed infectivity distributions (of parameter r = 1/k as logit normal and logit-t) should be used in order to characterize uncertainty and (2) EPA should consider excluding the UCP data set because it seems to be an outlier (see Section VII.K). In response, EPA has used the two recommended distributions for infectivity and has conducted the meta-analysis both with and without the UCP data due to uncertainty about whether it is appropriate to exclude these data.

Table III–2 presents meta-analysis estimates of the probability of infection given one oocyst ingested. Results are shown for the four different analysis conditions (log normal and log-t distributions; with and without UCP data) as well as a combined result derived by sampling equally from each distribution. A more complete description of the infectivity analysis is provided in Economic Analysis for the LT2ESWTR (USEPA 2003a).

TABLE III–2.—RISK OF INFECTION, GIVEN ONE OOCYST INGESTED

Basis for analysis		Probability of infection, one oocyst ingested	
Studies used	Distributional model	Mean	80% Credible interval
IOWA, TAMU, and UCP	Normal	0.07	0.007–0.19
IOWA, TAMU, and UCP	Student's t (3df) [1]	0.09	0.015–0.20
IOWA and TAMU	Normal	0.09	0.011–0.23
IOWA and TAMU	Student's t (3df) [1]	0.10	0.014–0.25
Equal Mix of the Four Above		0.09	0.011–0.22

[1] Student's t distribution with 3 degrees of freedom (3df).

The results in Table III–2 show that the mean probability of infection from ingesting a single infectious oocyst ranges from 7% to 10% depending on the assumptions used. In comparison, the best estimate in the IESWTR of this probability was 0.4%, based on the IOWA isolate alone, and using the earlier definition of infection. Thus, these data suggest that both the range and magnitude of *Cryptosporidium* infectivity is higher than was estimated in the final IESWTR.

It should be noted that although significantly more data on *Cryptosporidium* infectivity are available now than when EPA established the IESWTR, there remains uncertainty about this parameter in several areas. It is unknown how well the oocysts used in the feeding studies represent *Cryptosporidium* naturally occurring in the environment, and the analyses do not fully account for variability in host susceptibility and the effect of previous infections. Furthermore, the sample sizes are relatively small, and the confidence bands on the estimates span more than an order of magnitude. Another limitation is that none of the studies included doses below 10 oocysts, while when people ingest oocysts in drinking water it is usually a single oocyst.

3. Significance of New Infectivity Data

The new infectivity data reveal that oocysts vary greatly in their ability to infect human hosts. Moreover, due to this variability and the finding of a highly infectious isolate, TAMU, the overall population of oocysts appears to be more infective than assumed for the IESWTR. The meta-analysis described earlier indicates the probability of infection at low *Cryptosporidium* concentrations may be about 20 times as great as previously estimated (which was based on the IOWA isolate alone and using the earlier definition of infection (stool-confirmed infections)).

C. Cryptosporidium Occurrence

This section presents information on the occurrence of *Cryptosporidium* oocysts in drinking water sources. Occurrence information is important because it is used in assessing the risk associated with *Cryptosporidium* in both filtered and unfiltered systems, as well as in estimating the costs and benefits of the proposed LT2ESWTR.

For the IESWTR, EPA had no national survey data and relied instead on several studies that were local or regional. Those data suggested that a typical (median) filtered surface water source had approximately 2 *Cryptosporidium* oocysts per liter, while a typical unfiltered surface water source had about 0.01 oocysts per liter, a difference of two orders of magnitude.

Subsequent to promulgating the IESWTR, EPA obtained data from two national surveys: the Information Collection Rule and the Information Collection Rule Supplemental Surveys (ICRSS). These surveys were designed to provide improved estimates of occurrence on a national basis. As described in more detail later in this section, the Information Collection Rule and ICRSS results show three main differences in comparison to *Cryptosporidium* occurrence data used for the IESWTR:

(1) Average *Cryptosporidium* occurrence is lower. Median oocyst levels for the Information Collection Rule and ICRSS data are approximately 0.05/L, which is more than an order of magnitude lower than IESWTR estimates.

(2) *Cryptosporidium* occurrence is more variable from location to location than was shown by the data considered for the IESWTR. This indicates that although median occurrence levels are below those assumed for the IESWTR, there is a subset of systems whose levels are considerably greater than the median.

(3) There is a smaller difference in *Cryptosporidium* levels between typical filtered and unfiltered system water sources. The Information Collection Rule data do not support the IESWTR finding that unfiltered water systems have a risk of cryptosporidiosis equivalent to that of a filter plant with average quality source water.

This section begins with a summary of occurrence data that were used to assess risk under the IESWTR (these data were also used in the main risk assessment for the LT1ESWTR). This is followed by a discussion of the Information Collection Rule and ICRSS that covers the scope of the surveys, analytical methods, results, and a characterization of how these new data impact current understanding of *Cryptosporidium* exposure. A more detailed description of occurrence data is available in Occurrence and Exposure Assessment for the Long Term 2 Enhanced Surface Water Treatment Rule (USEPA 2003b).

1. Occurrence Data Evaluated for IESWTR

Occurrence information evaluated for the IESWTR is detailed in Occurrence and Exposure Assessment for The Interim Enhanced Surface Water Treatment Rule (USEPA 1998c). This information is summarized in the next two paragraphs.

a. *Filtered systems.* In developing the IESWTR, EPA evaluated *Cryptosporidium* occurrence data from a number of studies. Among these studies, LeChevallier and Norton (1995) produced the largest data set and data from this study were used for the IESWTR risk assessment. This study provided estimates of mean occurrence at 69 locations from the eastern and central U.S. Although limited by the small number of samples per site (one to sixteen samples; most sites were sampled five times), variation within and between sites appeared to be lognormal. The study's median measured source water concentration was 2.31 oocysts/L and the interquartile range (*i.e.*, 25th and 75th percentile) was 1.03 to 5.15 oocysts/L.

b. *Unfiltered systems.* To assess *Cryptosporidium* occurrence in unfiltered systems under the IESWTR, EPA evaluated *Cryptosporidium* monitoring results from several unfiltered water systems that had been summarized by the Seattle Water Department (Montgomery Watson, 1995). The median (central tendency) of these data was approximately 0.01 oocysts/L. Thus, the median concentration in these data set was about 2 orders of magnitude less than the median concentration in the data set used for filtered systems. These data, coupled with the assumption that filtered systems will remove at least 2 log of *Cryptosporidium* as required by the IESWTR, suggested that unfiltered systems that comply with the source water requirements of the SWTR may have a risk of cryptosporidiosis equivalent to that of a filter plant using a water source of average quality (62 FR 59507, November 3, 1997) (USEPA 1997a).

2. Overview of the Information Collection Rule and Information Collection Rule Supplemental Surveys (ICRSS)

The Information Collection Rule and the Information Collection Rule Supplemental Surveys (ICRSS) were national monitoring studies. They were designed to provide EPA with a more comprehensive understanding of the occurrence of microbial pathogens in drinking water sources in order to support regulatory decision making. The surveys attempted to control protozoa measurement error through requiring that (1) laboratories meet certain qualification criteria, (2) standardized methods be used to collect data, and (3) laboratories analyze performance evaluation samples throughout the duration of the study to ensure adequate analytical performance. Information Collection Rule monitoring took place from July 1997 to December 1998; ICRSS *Cryptosporidium* monitoring

began in March 1999 and ended in February 2000.

a. *Scope of the Information Collection Rule.* The Information Collection Rule (61 FR 24354, May 14, 1996) (USEPA 1996a) required large PWSs to collect water quality and treatment data related to DBPs and microbial pathogens over an 18-month period. PWSs using surface water or ground water under the direct influence of surface water as sources and serving at least 100,000 people were required to monitor their raw water monthly for *Cryptosporidium*, Giardia, viruses, total coliforms, and *E. coli.* Approximately 350 plants monitored for microbial parameters.

b. *Scope of the ICRSS.* The ICRSS were designed to complement the Information Collection Rule data set with data from systems serving fewer than 100,000 people and by employing an improved analytical method for protozoa (described later). The ICRSS included 47 large systems (serving greater than 100,000 people), 40 medium systems (serving 10,000 to 100,000 people) and 39 small systems (serving fewer than 10,000 people). Medium and large systems conducted 1 year of twice-per-month sampling for *Cryptosporidium*, Giardia , temperature, pH, turbidity, and coliforms. Other water quality measurements were taken once a month. Small systems did not test for protozoa but tested for all other water quality parameters.

3. Analytical Methods for Protozoa in the Information Collection Rule and ICRSS

This subsection describes analytical methods for *Cryptosporidium* that were used in the Information Collection Rule and ICRSS. Information on *Cryptosporidium* analytical methods is important for the LT2ESWTR for several reasons: (1) It is relevant to the quality of *Cryptosporidium* occurrence data used to assess risk and economic impact of the LT2ESWTR proposal, (2) it provides a basis for the statistical procedures employed to analyze the occurrence data, and (3) it is used to assess the adequacy of *Cryptosporidium* methods to support source-specific decisions under the LT2ESWTR.

The Information Collection Rule and ICRSS data sets were generated using different analytical methods. The Information Collection Rule Protozoan Method (ICR Method) was used to analyze water samples for *Cryptosporidium* during the Information Collection Rule. For the ICRSS, a similar but improved method, EPA Method 1622 (later 1623), was used for protozoa analyses (samples were analyzed for *Cryptosporidium* using Method 1622 for the first 4 months; then Method 1623 was implemented so that Giardia concentrations could also be measured).

a. *Information Collection Rule Protozoan Method.* With the Information Collection Rule Method (USEPA 1996b), samples were collected by passing water through a filter, which was then delivered to an EPA-approved Information Collection Rule laboratory for analysis. The laboratory eluted the filter, centrifuged the eluate, and separated *Cryptosporidium* oocysts and Giardia cysts from other debris by density-gradient centrifugation. The oocysts and cysts were then stained and counted. Differential interference contrast (DIC) microscopy was used to examine internal structures.

The Information Collection Rule Method provided a quantitative measurement of *Cryptosporidium* oocysts and Giardia cysts, but it is believed to have generally undercounted the actual occurrence (modeling, described later, adjusted for undercounting). This undercounting was due to low volumes analyzed and low method recovery. The volume analyzed directly influences the sensitivity of the analytical method and the Information Collection Rule Method did not require a specific volume analyzed. As a result, sample volumes analyzed during the Information Collection Rule varied widely, depending on the water matrix and analyst discretion, with a median volume analyzed of only 3 L.

Method recovery characterizes the likelihood that an oocyst present in the original sample will be counted. Loss of organisms may occur at any step of the analytical process, including filtration, elution, concentration of the eluate, and purification of the concentrate. To assess the performance of the Information Collection Rule Method, EPA implemented the Information Collection Rule Laboratory Spiking Program. This program involved collection of duplicate samples on two dates from 70 plants. On each occasion, one of the duplicate samples was spiked with a known quantity of Giardia cysts and *Cryptosporidium* oocysts (the quantity was unknown to the laboratory performing the analysis), and both samples were processed according to the method. Recovery of spiked *Cryptosporidium* oocysts ranged from 0% to 65% with a mean of 12% and a standard deviation nearly equal to the mean (relative standard deviation (RSD) approximately 100%) (Scheller *et al.* 2002).

b. *Method 1622 and Method 1623.* EPA developed Method 1622 (detects *Cryptosporidium*) and 1623 (detects *Cryptosporidium* and Giardia) to achieve higher recovery rates and lower inter- and intra-laboratory variability than previous methods. These methods incorporate improvements in the concentration, separation, staining, and microscope examination procedures. Specific improvements include the use of more effective filters, immunomagnetic separation (IMS) to separate the oocysts and cysts from extraneous materials present in the water sample, and the addition of 4, 6-diamidino-2-phenylindole (DAPI) stain for microscopic analysis. The performance of these methods was tested through single-laboratory studies and validated through multiple-laboratory validation (round robin) studies.

The per-sample volume analyzed for *Cryptosporidium* during the ICRSS was larger than in the Information Collection Rule, due to a requirement that laboratories analyze a minimum of 10 L or 2 mL of packed pellet with Methods 1622/23 (details in section IV.K). To assess method recovery, matrix spike samples were analyzed on five sampling events for each plant. The protozoa laboratory spiked the additional sample with a known quantity of *Cryptosporidium* oocysts and Giardia cysts (the quantity was unknown to the laboratory performing the analysis) and filtered and analyzed both samples using Methods 1622/23. Recovery in the ICRSS matrix spike study averaged 43% for *Cryptosporidium* with an RSD of 47% (Connell *et al.* 2000). Thus, mean *Cryptosporidium* recovery with Methods 1622/23 under the ICRSS was more than 3.5 times higher than mean recovery in the Information Collection Rule lab spiking program and relative standard deviation was reduced by more than half.

Although Methods 1622 and 1623 have several advantages over the Information Collection Rule method, they also have some of the same limitations. These methods do not determine whether a cyst or oocyst is viable and infectious, and both methods require a skilled microscopist and several hours of sample preparation and analyses.

4. *Cryptosporidium* Occurrence Results from the Information Collection Rule and ICRSS

This section describes *Cryptosporidium* monitoring results from the Information Collection Rule and ICRSS. The focus of this discussion is the national distribution of mean *Cryptosporidium* occurrence levels in the sources of filtered and unfiltered plants.

The observed (raw, unadjusted) *Cryptosporidium* data from the Information Collection Rule and ICRSS do not accurately characterize true concentrations because of (a) the low and variable recovery of the analytical method, (b) the small volumes analyzed, and (c) the relatively small number of sample events. EPA employed a statistical treatment to estimate the true underlying occurrence that led to the data observed in the surveys and to place uncertainty bounds about that estimation.

A hierarchical model with Bayesian parameter estimation techniques was used to separately analyze filtered and unfiltered system data from the Information Collection Rule and the large and medium system data from the ICRSS. The model included parameters for location, month, source water type, and turbidity. Markov Chain Monte Carlo methods were used to estimate these parameters, producing a large number of estimate sets that represent uncertainty. This analysis is described more completely in Occurrence and Exposure Assessment for the Long Term 2 Enhanced Surface Water Treatment Rule (USEPA 2003b).

a. *Information Collection Rule results.* Figure III–1 presents plant-mean *Cryptosporidium* levels for Information Collection Rule plants as a cumulative distribution. Included in Figure III–1 are distributions of both the observed raw data adjusted for mean analytical method recovery of 12% and the modeled estimate of the underlying distribution, along with 90% confidence bounds. The two distributions (observed and modeled) are similar for plants where *Cryptosporidium* was detected (196 of 350 Information Collection Rule plants did not detect *Cryptosporidium* in any source water samples). The modeled distribution allows for estimation of *Cryptosporidium* concentrations in sources where oocysts may have been present but were not detected due to low sample volume and poor method recovery (this concept is explained further later in this section).

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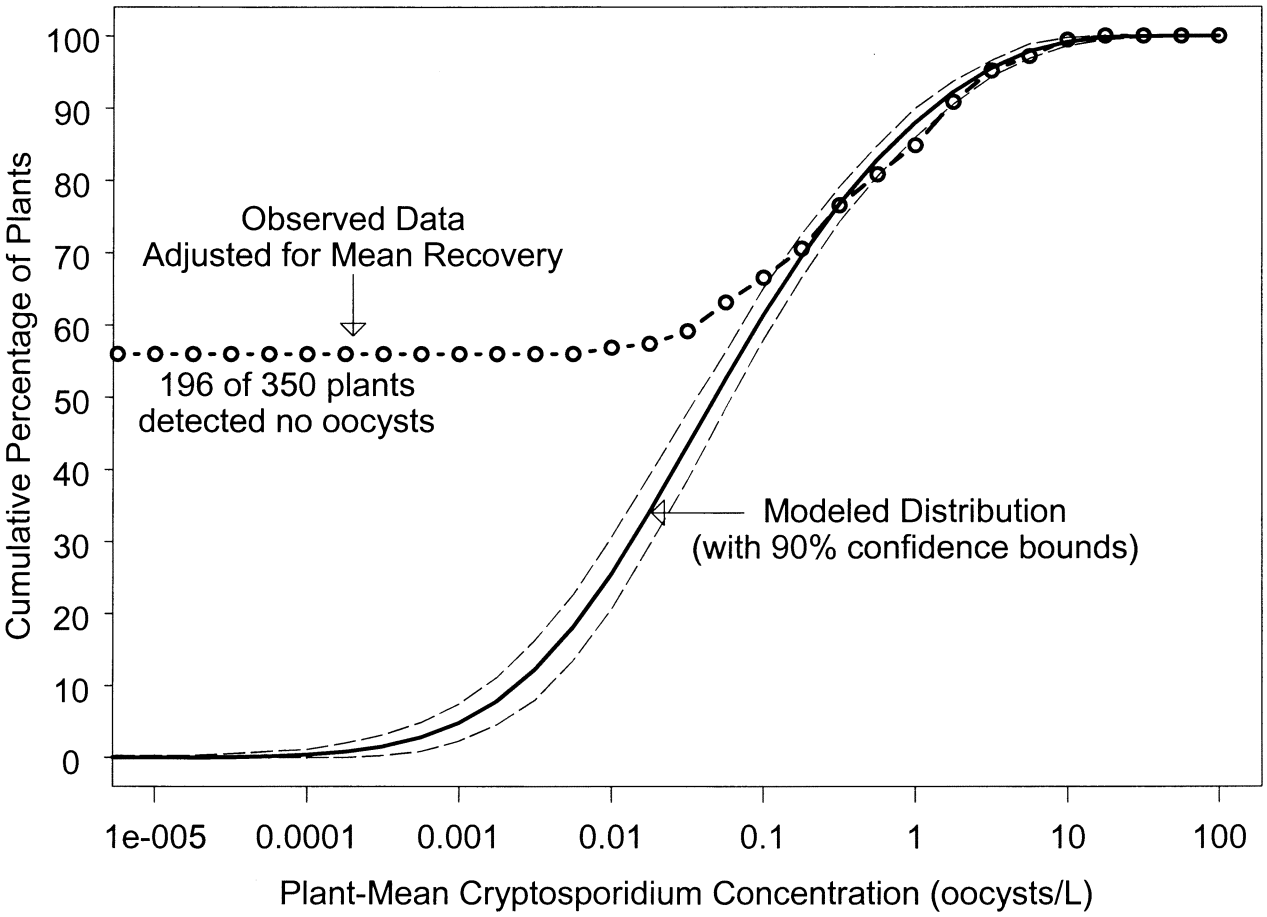

Figure III-1.-- Plant-Mean *Cryptosporidium* Levels for Information Collection Rule Plants

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The results shown in Figure III–1 indicate that mean *Cryptosporidium* levels among Information Collection Rule plants vary widely, with many plants having relatively little contamination and a fraction of plants with elevated source water pathogen levels. The median and 90th percentile estimates of Information Collection Rule plant-mean *Cryptosporidium* levels are 0.048 and 1.3 oocysts/L, respectively. These levels are lower than *Cryptosporidium* occurrence estimates used in the IESWTR (USEPA 1998c), and the distribution of Information

Collection Rule data is broader (*i.e.*, more source-to-source variability). Also, the occurrence of *Cryptosporidium* in flowing stream sources was greater and more variable than in reservoir/lake sources (shown in USEPA 2003b).

The fact that only 44% of Information Collection Rule plants had one or more samples positive for *Cryptosporidium* and that only 7% of all Information Collection Rule samples were positive for *Cryptosporidium* suggests that oocyst levels were relatively low in many source waters. However, as noted earlier, it is expected that *Cryptosporidium* oocysts were present in many more source waters at the time of sampling and were not detected due to poor analytical method recovery and low sample volumes.

This concept is illustrated by Figure III–2, which shows the likelihood of no oocysts being detected by the Information Collection Rule method as a function of source water concentration (assumes median Information Collection Rule sample volume of 3 L). As can be seen in Figure III–2, when the source water concentration is 1 oocyst/L, which is a relatively high level, the probability of no oocysts being detected in a 3 L sample is 73%; for a source water with 0.1 oocyst/L, which is close to the median occurrence level, the probability of a non-detect is 97%. Consequently, EPA has concluded that it is appropriate and necessary to use a statistical model to estimate the underlying distribution.

EPA modeled *Cryptosporidium* occurrence separately for filtered and unfiltered plants that participated in the Information Collection Rule because unfiltered plants comply with different regulatory requirements than filtered plants. As shown in Table III–3, the occurrence of *Cryptosporidium* was lower for unfiltered sources.

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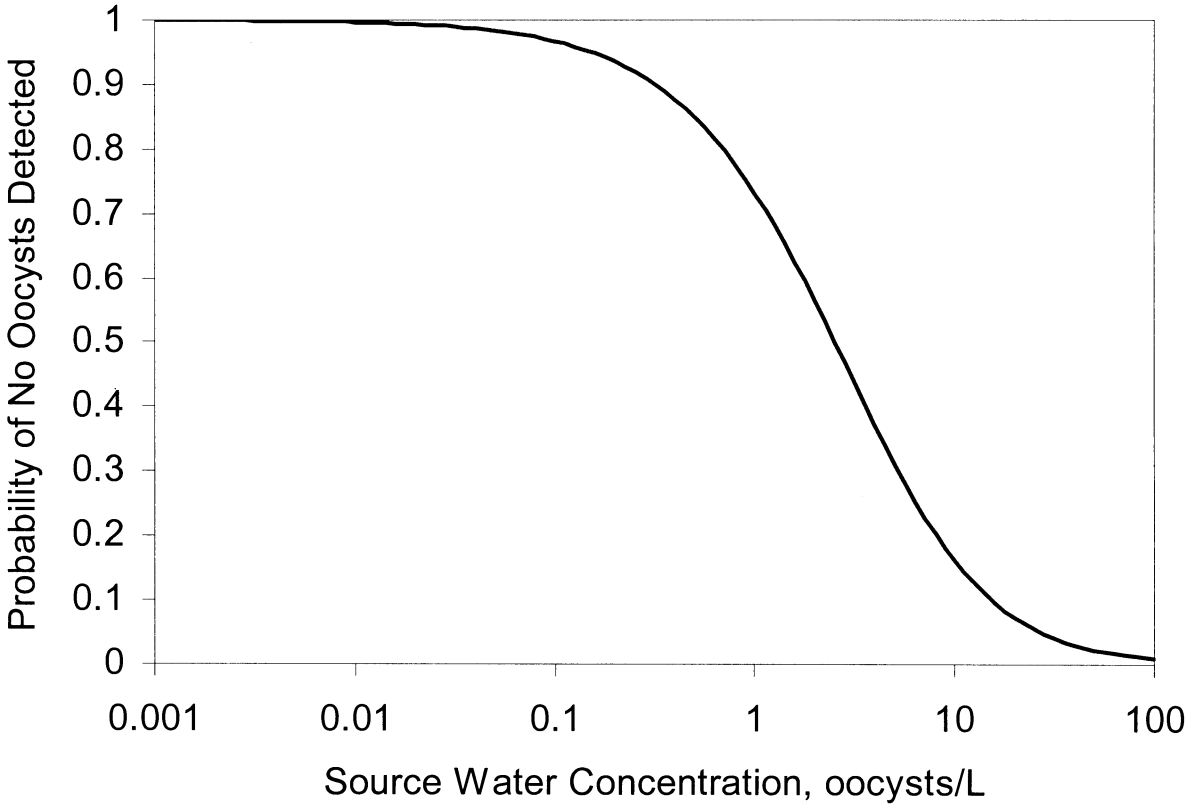

Figure III-2.-- Probability of No Oocysts Being Detected by the Information Collection Rule Method as a Function of Source Water *Cryptosporidium* Concentration

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TABLE III–3.—SUMMARY OF INFORMATION COLLECTION RULE *Cryptosporidium* MODELED SOURCE WATER DATA FOR UNFILTERED AND FILTERED PLANTS

Source	Information collection rule modeled plant-mean (oocysts/L)		
	Mean	Median	90th percentile
Unfiltered	0.014	0.0079	0.033
Filtered	0.59	0.052	1.4

The median *Cryptosporidium* occurrence level for unfiltered systems in the Information Collection Rule was 0.0079 oocysts/L, which is close to the median level of 0.01 oocysts/L reported for unfiltered systems in the IESWTR (Montgomery Watson, 1995). However, the Information Collection Rule data do not show the 2 log difference in median *Cryptosporidium* levels between filtered and unfiltered systems that was observed for the data used in the IESWTR. The ratio of median plant-mean occurrence in unfiltered plants to filtered plants is about 1:7 (see Table III–3). Thus, based on an assumption of a minimum 2 log removal of *Cryptosporidium* by filtration plants (as required by the IESWTR and LT1ESWTR), these data indicate that, on average, finished water oocysts levels are higher in unfiltered systems than in filtered systems.

b. *ICRSS results.* Figures III–3 and III–4 present plant-mean *Cryptosporidium* levels for ICRSS medium and large systems, respectively, as cumulative distributions. Medium and large system data were analyzed separately to identify differences between the two data sets. Similar to the Information Collection Rule data plot, Figures III–3 and III–4 include distributions for both the observed raw data adjusted for mean analytical method recovery of 43% and the modeled estimate of the underlying distribution, along with 90% confidence bounds. The observed and modeled distributions are similar for the 85% of ICRSS plants that detected *Cryptosporidium*, and the modeled distribution allows for estimation of *Cryptosporidium* concentrations for source waters where oocysts may have been present but were not detected.

Plant-mean *Cryptosporidium* concentrations for large and medium systems in the ICRSS are similar at the mid and lower range of the distribution and differ at the upper end. ICRSS medium and large systems both had median plant-mean *Cryptosporidium* levels of approximately 0.05 oocysts/L, which is close to the median oocyst level in the Information Collection Rule data set as well. However, the 90th percentile plant-mean was 0.33 oocysts/L for ICRSS medium systems and 0.24 oocysts/L for ICRSS large systems. Note that in the Information Collection Rule distribution, the 90th percentile *Cryptosporidium* concentration is 1.3 oocysts/L, which is significantly higher than either the ICRSS medium or large system distribution.

The reasons for different results between the surveys are not well understood, but may stem from year-to-year variation in occurrence, systematic differences in the sampling or measurement methods employed, and differences in the populations sampled. This topic is discussed further at the end of this section.

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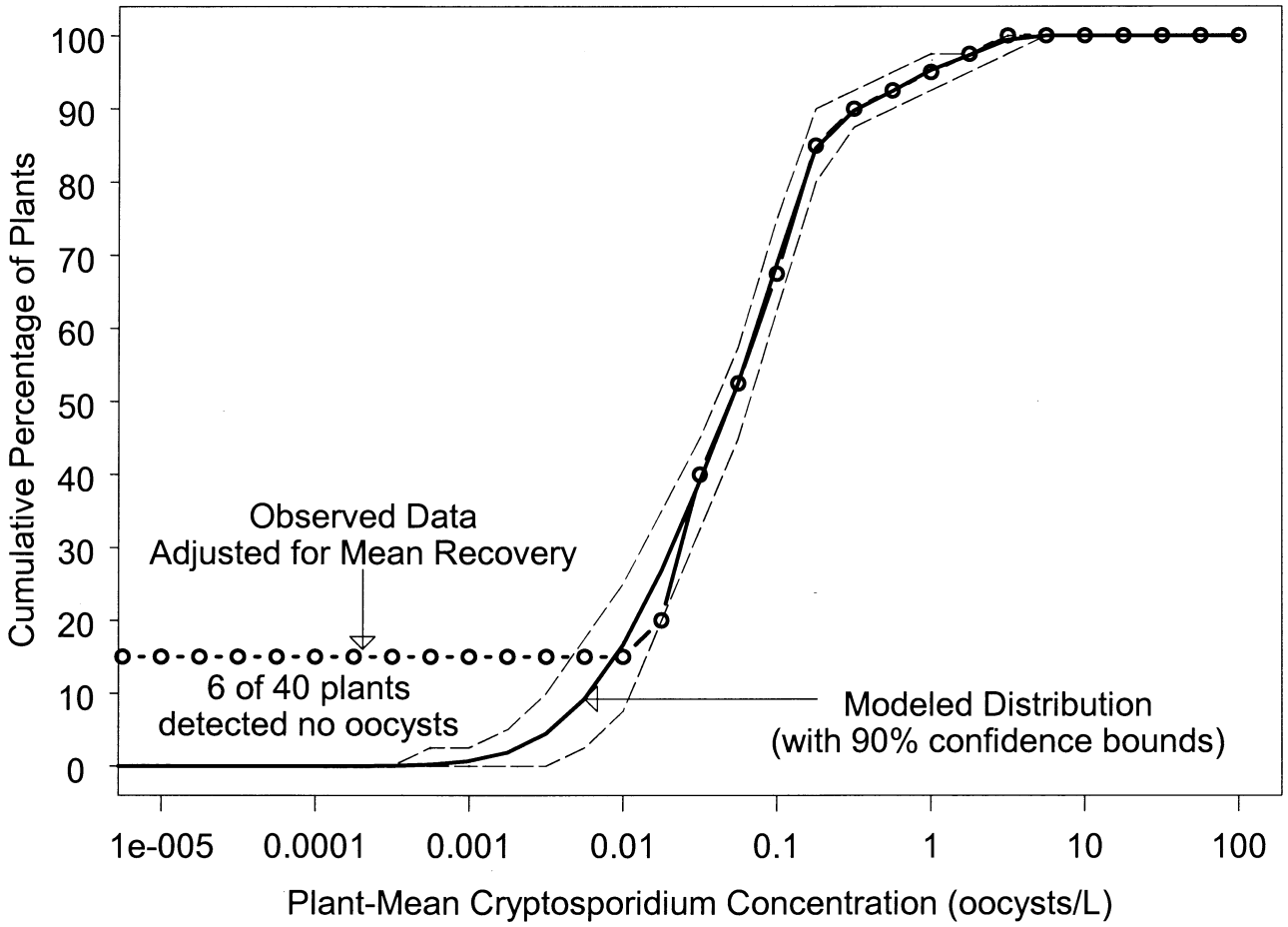

Figure III-3.-- Plant-Mean *Cryptosporidium* Levels for ICRSS Medium Plants

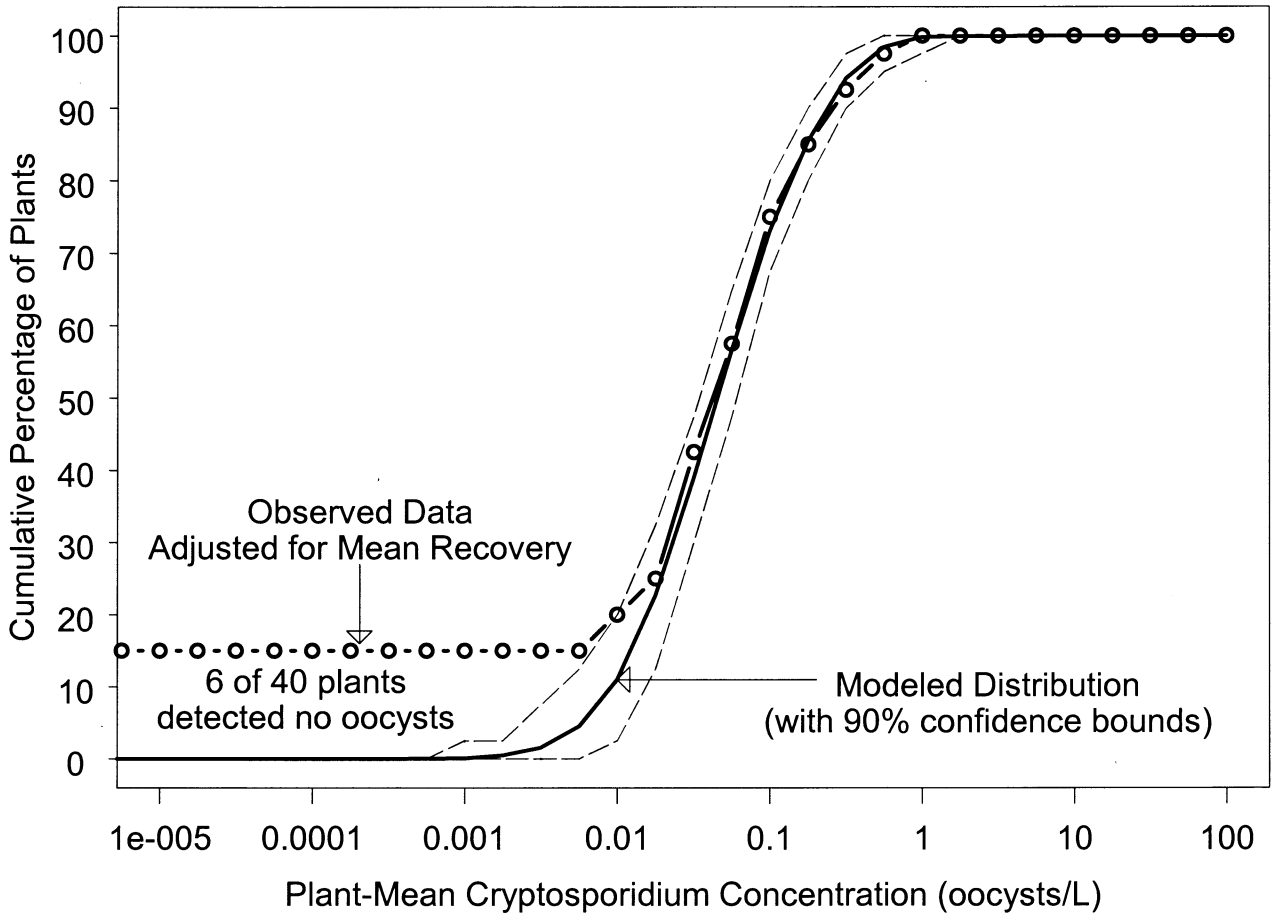

Figure III-4.-- Plant-Mean *Cryptosporidium* Levels for ICRSS Large Plants

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5. Significance of new *Cryptosporidium* occurrence data.

The Information Collection Rule and ICRSS data substantially improve overall knowledge of the occurrence distribution of *Cryptosporidium* in drinking water sources. They provide data on many more water sources than were available when the IESWTR was developed and the data are of more uniform quality. In regard to filtered systems, these new data demonstrate two points:

(1) The occurrence of *Cryptosporidium* in many drinking water sources is lower than was indicated by the data used in IESWTR. Median plant-mean levels for the Information Collection Rule and ICRSS data sets are approximately 0.05 oocysts/L, whereas the median oocyst concentration in the LeChevallier and Norton (1995) data used in the IESWTR risk assessment was 2.3 oocysts/L.

(2) *Cryptosporidium* occurrence is more variable from plant to plant than was indicated by the data considered for the IESWTR (*i.e.,* occurrence distribution is broader). This is illustrated by considering the ratio of the 90th percentile to the median plant-mean concentration. In the LeChevallier and Norton (1995) data used for the IESWTR, this ratio was 4.6, whereas in the Information Collection Rule data, this ratio is 27.

These data, therefore, support the finding that *Cryptosporidium* levels are relatively low in most water sources, but there is a subset of sources with relatively higher concentrations where additional treatment may be appropriate.

In regard to unfiltered plants, the Information Collection Rule data are consistent with the *Cryptosporidium* occurrence estimates for unfiltered systems in the IESWTR. However, due to the lower occurrence estimates for filtered systems noted previously, the Information Collection Rule data do not support the IESWTR finding that unfiltered water systems in compliance with the source water requirements of the SWTR have a risk of cryptosporidiosis equivalent to that of a well-operated filter plant using a water source of average quality (63 FR 69492, December 16, 1998) (USEPA 1998a). Rather, these data indicate that Agency conclusions regarding the risk comparison between unfiltered and filtered drinking waters must be revised. For protection equivalent to that provided by filtered systems, unfiltered systems must take additional steps to strengthen their microbial barriers.

6. Request for Comment on Information Collection Rule and ICRSS Data Sets

EPA notes that there are significant differences in the Information Collection Rule and ICRSS medium and large system data sets. The median values for these data sets are 0.048, 0.050, and 0.045 oocysts/L, respectively, while the 90th percentile values are 1.3, 0.33, and 0.24 oocysts/L. The reasons for these differences are not readily apparent. The ICRSS used a newer method with better quality control that yields significantly higher recovery, and this suggests that these data are more

reliable for estimating concentrations at individual plants. However, the Information Collection Rule included a much larger number of plants (350 v. 40 each for the ICRSS medium and large system surveys) and, consequently, may be more reliable for estimating occurrence nationally. The surveys included a similar number of samples per plant (18 v. 24 in the ICRSS). The two surveys cover different time periods (7/97–12/98 for the Information Collection Rule and 3/99–2/00 for the ICRSS).

In order to better understand the factors that may account for the differences in the three data sets, EPA conducted several additional analyses. First, EPA compared results for the subset of 40 plants that were in both the Information Collection Rule and ICRSS large system surveys. The medians for the two data sets were 0.13 and 0.045 oocysts/L, respectively, while the 90th percentiles were 1.5 and 0.24 oocysts/L. Clearly, the discrepancy between the two surveys persists for the subsample of data from plants that participated in both surveys. This suggests that the different sample groups in the full data sets are not the primary factor that accounts for the different results.

Next, EPA looked at the six month period (July through December) that was sampled in two consecutive years (1997 and 1998) during the Information Collection Rule survey to investigate year-to-year variations at the same plants. Estimated medians for 1997 and 1998 were 0.062 and 0.040 oocysts/L, respectively, while the 90th percentiles were 1.1 and 1.3 oocysts/L. While these comparisons show some interyear variability, it is less than the variability observed between the Information Collection Rule and ICRSS data sets. EPA has no data comparing the same plants using the same methods for the time periods in question (1997–98 and 1999–2000) so it is not known if the variation between these time periods was larger than the apparent variation between 1997 and 1998 in the Information Collection Rule data set.

The choice of data set has a significant effect on exposure, cost, and benefit estimates for the LT2ESWTR. Due to the lack of any clear criterion for favoring one data set over the other, EPA has conducted the analyses for this proposed rule separately for each, and presents a range of estimates based on the three data sets. EPA requests comment on this approach. EPA will continue to evaluate the relative strengths and limitations of the three data sets, as well as any new data that may become available for the final rule.

D. Treatment

1. Overview

This section presents information on treatment processes for reducing the risk from *Cryptosporidium* in drinking water. Treatment information is critical to two aspects of the LT2ESWTR: (1) estimates of the efficiency of water filtration plants in removing *Cryptosporidium* are used in assessing risk in treated drinking water and (2) the performance and availability of treatment technologies like ozone, UV light, and membranes that effectively inactivate or remove *Cryptosporidium* impact the feasibility of requiring additional treatment for this pathogen.

The majority of plants treating surface water use conventional filtration treatment, which is defined in 40 CFR 141.2 as a series of processes including coagulation, flocculation, sedimentation, and filtration. Direct filtration, which is typically used on sources with low particulate levels, includes coagulation and filtration but not sedimentation. Other common filtration processes are slow sand, diatomaceous earth (DE), membranes, and bag and cartridge filters.

For the IESWTR (and later the LT1ESWTR), EPA evaluated results from pilot and full scale studies of *Cryptosporidium* removal by various types of filtration plants. Based on these studies, EPA concluded that conventional and direct filtration plants meeting IESWTR filter effluent turbidity standards will achieve a minimum 2 log (99%) removal of *Cryptosporidium*. The Agency reached the same conclusion for slow sand and DE filtration plants meeting SWTR turbidity standards. Treatment credit for technologies like membranes and bag and cartridge filters was to be made on a product-specific basis.

Subsequent to promulgating the IESWTR and LT1ESWTR, EPA has reviewed additional studies of the performance of treatment plants in removing *Cryptosporidium*, as well as other micron size particles (*e.g.,* aerobic spores) that may serve as indicators of *Cryptosporidium* removal. As discussed later in this section, the Agency has concluded that these studies support an estimate of 3 log (99.9%) for the average *Cryptosporidium* removal efficiency of conventional treatment plants in compliance with the IESWTR or LT1ESWTR. Section IV.A describes how this estimate of average removal efficiency is used in determining the need for additional *Cryptosporidium* treatment under the LT2ESWTR. Further, this estimate is consistent with the Stage 2 M–DBP Agreement in Principle, which states as follows:

> The additional treatment requirements in the (LT2ESWTR) bin requirement table are based, in part, on the assumption that conventional treatment plants in compliance with the IESWTR achieve an average of 3 logs removal of *Cryptosporidium*.

In addition, the Agency finds that available data support an estimate of 3 log average *Cryptosporidium* removal for well operated slow sand and DE plants. Direct filtration plants are estimated to achieve a 2.5 log average *Cryptosporidium* reduction, in consideration of the absence of a sedimentation process in these plants.

The most significant developments in the treatment of *Cryptosporidium* since IESWTR promulgation are in the area of inactivation. During IESWTR development, EPA determined that available data were not sufficient to identify criteria for awarding *Cryptosporidium* treatment credit for any disinfectant. As presented in section IV.C.14, EPA has now acquired the necessary data to specify the disinfectant concentrations and contact times necessary to achieve different levels of *Cryptosporidium* inactivation with chlorine dioxide and ozone. Additionally, recent studies have demonstrated that UV light will produce high levels of *Cryptosporidium* and *Giardia lamblia* inactivation at low doses. Section IV.C.15 provides criteria for systems to achieve credit for disinfection of *Cryptosporidium*, *Giardia lamblia*, and viruses by UV.

This section begins with a summary of treatment information considered for the IESWTR and LT1ESWTR, followed by a discussion of additional data that EPA has evaluated since promulgating those regulations. Further information on treatment of *Cryptosporidium* is available in Technologies and Costs for Control of Microbial Contaminants and Disinfection Byproducts (USEPA 2003c), Occurrence and Exposure Assessment for the Long Term 2 Enhanced Surface Water Treatment Rule (USEPA 2003b) and section IV.C of this preamble.

2. Treatment information considered for the IESWTR and LT1ESWTR

Treatment studies that were evaluated during development of the IESWTR are described in the IESWTR NODA (62 FR 59486, November 3, 1997) (USEPA 1997b), the Regulatory Impact Analysis for the IESWTR (USEPA 1998d), and Technologies and Costs for the Microbial Recommendations of the M/DBP Advisory Committee (USEPA 1997b). Treatment information considered in development of the

LT1ESWTR is described in the proposed rule (65 FR 59486, April 10, 2000) (USEPA 2000b). Pertinent information is summarized in the following paragraphs.

a. *Physical removal.* EPA evaluated eight studies on removal of *Cryptosporidium* by rapid granular filtration for the IESWTR. These were Patania *et al.* (1995), Nieminski and Ongerth (1995), Ongerth and Pecoraro (1995), LeChevallier and Norton (1992), LeChevallier *et al.* (1991), Foundation for Water Research (1994), Kelley *et al.* (1995), and West *et al.* (1994). These studies included both pilot and full scale plants.

Full scale plants in these studies typically demonstrated 2–3 log removal of *Cryptosporidium*, and pilot plants achieved up to almost 6 log removal under optimized conditions. In general, the degree of removal that can be quantified in full scale plants is limited because *Cryptosporidium* levels following filtration are often below the detection limit of the analytical method. Pilot scale studies overcome this limitation by seeding high concentrations of oocysts to the plant influent, but extrapolation of the performance of a pilot plant to the routine performance of full scale plants is uncertain.

Cryptosporidium removal efficiency in these studies was observed to depend on a number of factors including: water matrix, coagulant application, treatment optimization, filtered water turbidity, and the filtration cycle. The highest removal rates were observed in plants that achieved very low effluent turbidities.

EPA also evaluated studies of *Cryptosporidium* removal by slow sand (Schuler and Ghosh 1991, Timms *et al.* 1995) and DE filtration (Schuler and Gosh 1990) for the IESWTR. These studies indicated that a well designed and operated plant using these processes could achieve 3 log or greater removal of *Cryptosporidium*.

After considering these studies, EPA concluded that conventional and direct filtration plants in compliance with the effluent turbidity criteria of the IESWTR, and slow sand and DE plants in compliance with the effluent turbidity criteria established for these processes by the SWTR, would achieve at least 2 log removal of *Cryptosporidium*. Recognizing that many plants will achieve more than the minimum 2 log reduction, EPA estimated median *Cryptosporidium* removal among filtration plants as near 3 log (99.9%) for the purpose of assessing risk.

The LT1ESWTR proposal included summaries of additional studies of *Cryptosporidium* removal by conventional treatment (Dugan *et al.* 1999), direct filtration (Swertfeger *et al.* 1998), and DE filtration (Ongerth and Hutton 1997). These studies supported IESWTR conclusions stated previously regarding the performance of these processes. The LT1ESWTR proposal also summarized studies of membranes, bag filters, and cartridge filters (Jacangelo *et al.* 1995, Drozd and Schartzbrod 1997, Hirata and Hashimoto 1998, Goodrich *et al.* 1995, Collins *et al.* 1996, Lykins *et al.* 1994, Adham *et al.* 1998). This research demonstrated that these technologies may be capable of achieving 2 log or greater removal of *Cryptosporidium*. However, EPA concluded that variation in performance among different manufacturers and models necessitates that determinations of treatment credit be made on a technology-specific basis (65 FR 19065, April 10, 2000) (USEPA 2000b).

b. Inactivation. In the IESWTR NODA (62 FR 59486) (USEPA 1997a), EPA cited studies that demonstrated that chlorine is ineffective for inactivation of *Cryptosporidium* at doses practical for treatment plants (Korich *et al.* 1990, Ransome *et al.* 1993, Finch *et al.* 1997). The Agency also summarized studies of *Cryptosporidium* inactivation by UV, ozone, and chlorine dioxide. EPA evaluated these disinfectants to determine if sufficient data were available to develop prescriptive disinfection criteria for *Cryptosporidium*.

The studies of UV disinfection of *Cryptosporidium* that were available during IESWTR development were inconclusive due to methodological factors. These studies included: Lorenzo-Lorenzo *et al.* (1993), Ransome *et al.* (1993), Campbell *et al.* (1995), Finch *et al.* (1997), and Clancy *et al.* (1997). A common limitation among these studies was the use of in vitro assays, such as excystation and vital dye staining, to measure loss of infectivity. These assays subsequently were shown to overestimate the UV dose needed to inactivate protozoa (Clancy *et al.* 1998, Craik *et al.* 2000). In another case, a reactor vessel that blocked germicidal light was used (Finch *et al.* 1997).

EPA evaluated the following studies of ozone inactivation of *Cryptosporidium* for the IESWTR: Peeters *et al.* (1989), Korich *et al.* (1990), Parker *et al.* (1993), Ransome *et al.* (1993), Finch *et al.* (1997), Daniel *et al.* (1993), and Miltner *et al.* (1997). These studies demonstrated that ozone could achieve high levels of *Cryptosporidium* inactivation, albeit at doses much higher than those required to inactivate Giardia. Results of these studies also exhibited significant variability due to factors like different infectivity assays and methods of dose calculation.

The status of chlorine dioxide inactivation of *Cryptosporidium* during IESWTR development was similar to that of ozone. EPA evaluated a number of studies that indicated that relatively high doses of chlorine dioxide could achieve significant inactivation of *Cryptosporidium* (Peeters *et al.* 1989, Korich *et al.* 1990, Ransome *et al.* 1993, Finch *et al.* 1995 and 1997, and LeChevallier *et al.* 1997). Data from these studies showed a high level of variability due to methodological differences, and the feasibility of high chlorine dioxide doses was uncertain due to the MCL for chlorite that was established by the Stage 1 DBPR.

After reviewing these studies, EPA and the Stage 1 Federal Advisory Committee concluded that available data were not adequate to award *Cryptosporidium* inactivation credit for UV, ozone, or chlorine dioxide.

3. New Information on Treatment for Control of *Cryptosporidium*

a. *Conventional filtration treatment and direct filtration.* This section provides brief descriptions of seven recent studies of *Cryptosporidium* removal by conventional treatment and direct filtration, followed by a summary of key points.

Dugan *et al.* (2001) evaluated the ability of conventional treatment to control *Cryptosporidium* under varying water quality and treatment conditions, and assessed turbidity, total particle counts (TPC), and aerobic endospores as indicators of *Cryptosporidium* removal. Fourteen runs were conducted on a small pilot scale plant that had been determined to provide equivalent performance to a larger plant. Under optimal coagulation conditions, oocyst removal across the sedimentation basin ranged from 0.6 to 1.8 log, averaging 1.3 log, and removal across the filters ranged from 2.9 to greater than 4.4 log, averaging greater than 3.7 log. Removal of aerobic spores, TPC, and turbidity all correlated with removal of *Cryptosporidium* by sedimentation, and these parameters were conservative indicators of *Cryptosporidium* removal across filtration. Sedimentation removal under optimal conditions related to raw water quality, with the lowest *Cryptosporidium* removals observed when raw water turbidity was low.

Suboptimal coagulation conditions (underdosed relative to jar test predictions) significantly reduced plant

performance. Oocyst removal in the sedimentation basin averaged 0.2 log, and removal by filtration averaged 1.5 log. Under suboptimal coagulation conditions, low sedimentation removals of *Cryptosporidium* were observed regardless of raw water turbidity.

Nieminski and Bellamy (2000) investigated surrogates as indicators of Giardia and *Cryptosporidium* in source water and as measures of treatment plant effectiveness. It involved sampling for microbial pathogens (Giardia, *Cryptosporidium*, and enteric viruses), potential surrogates (bacteria, bacteria spores, bacterial phages, turbidity, particles), and other water quality parameters in the source and finished waters of 23 surface water filtration facilities and one unfiltered system.

While Giardia and *Cryptosporidium* were found in the majority of source water samples, the investigators could not establish a correlation between either occurrence or removal of these protozoa and any of the surrogates tested. This was attributed, in part, to low concentrations of Giardia and *Cryptosporidium* in raw water and high analytical method detection limits. Removal of *Cryptosporidium* and Giardia averaged 2.2 and 2.6 log, respectively, when conservatively estimated using detection limits in filtered water. Aerobic spores were found in 85% of filtered water samples and were considered a measure of general treatment effectiveness. Average reduction of aerobic spores was 2.84 log. Direct filtration plants removed fewer aerobic spores than conventional or softening plants.

McTigue *et al.* (1998) conducted an on-site survey of 100 treatment plants for particle counts, pathogens (*Cryptosporidium* and Giardia), and operational information. The authors also performed pilot scale spiking studies. Median removal of particles greater than 2 mm was 2.8 log, with values ranging from 0.04 to 5.5 log. Removal generally increased with increasing raw water particle concentration. Results were consistent with previously collected data. *Cryptosporidium* and Giardia were found in the majority of raw water sources, but calculation of their log removal was limited by the concentration present. River sources had a higher incidence of pathogen occurrence. Direct filtration plants had higher levels of pathogens in the filtered water than others in the survey.

Nearly all of the filter runs evaluated in the survey exhibited spikes where filtered water particle counts increased, and pilot work showed that pathogens are more likely to be released during these spike events. *Cryptosporidium* removal in the pilot scale spiking study averaged nearly 4 log, regardless of the influent oocyst concentration. Pilot study results indicated a strong relationship between removal of *Cryptosporidium* and removal of particles (> 3 μm) during runs using optimal coagulation and similar temperatures.

Patania *et al.* (1999) evaluated removal of *Cryptosporidium* at varied raw water and filter effluent turbidity levels using direct filtration. Runs were conducted with both low (2 NTU) and high (10 NTU) raw water turbidity. Targeted filtered water turbidity was either 0.02 or 0.05 NTU. At equivalent filtered water turbidity, *Cryptosporidium* removal was slightly higher when the raw water turbidity was higher. Also, *Cryptosporidium* removal was enhanced by an average of 1.5 log when steady-state filtered water turbidity was 0.02 NTU compared to 0.05 NTU.

Huck *et al.* (2000) evaluated filtration efficiency during optimal and suboptimal coagulation conditions with two pilot scale filtration plants. One plant employed a high coagulation dose for both total organic carbon (TOC) and particle removal, and the second plant used a low dose intended for particle removal only. Under optimal operating conditions, which were selected to achieve filtered water turbidity below 0.1 NTU, median *Cryptosporidium* removal was 5.6 log at the high coagulant dose plant and 3 log at the low dose plant. Under suboptimal coagulation conditions, where the coagulant dose was reduced to achieve filtered water turbidity of 0.2 to 0.3 NTU, median *Cryptosporidium* removals dropped to 3.2 log and 1 log at the high dose and low dose plants, respectively. Oocyst removal also decreased substantially at the end of the filter cycle, although this was not always indicated by an increase in turbidity. Runs conducted with no coagulant resulted in very little *Cryptosporidium* removal.

Emelko *et al.* (2000) investigated *Cryptosporidium* removal during vulnerable filtration periods using a pilot scale direct filtration system. The authors evaluated four different operational conditions: stable, early breakthrough, late breakthrough, and end of run. During stable operation, effluent turbidity was approximately 0.04 NTU and *Cryptosporidium* removal ranged from 4.7 to 5.8 log. In the early breakthrough period, effluent turbidity increased from approximately 0.04 to 0.2 NTU, and *Cryptosporidium* removal decreased significantly, averaging 2.1 log. For the late breakthrough period, where effluent turbidity began at approximately 0.25 NTU and ended at 0.35 NTU, *Cryptosporidium* removal dropped to an average of 1.4 log. Two experiments tested *Cryptosporidium* removal during the end-of-run operation, when effluent turbidities generally start increasing. Turbidity started at about 0.04 NTU for both experiments and ended at 0.06 NTU for the first experiment and 0.13 NTU for the second. Reported *Cryptosporidium* removal ranged from 1.8 to 3.3 log, with an average of 2.5 log for both experiments.

Harrington *et al.* (2001) studied the removal of *Cryptosporidium* and emerging pathogens by filtration, sedimentation, and dissolved air flotation (DAF) using bench scale jar tests and pilot scale conventional treatment trains. In the bench scale experiments, all run at optimized coagulant doses, mean log removal of *Cryptosporidium* was 1.2 by sedimentation and 1.7 by DAF. *Cryptosporidium* removal was similar in all four water sources that were evaluated and was not significantly affected by lower pH or coagulant aid addition. However, removal of *Cryptosporidium* was greater at 22°C than at 5°C, and was observed to be higher with alum coagulant than with either polyaluminum hydroxychlorosulfate or ferric chloride.

In the pilot scale experiments, mean log removal of *Cryptosporidium* was 1.9 in filtered water with turbidity of 0.2 NTU or less. Removal increased as filtered water turbidity dropped below 0.3 NTU. There was no apparent effect of filtration rate on removal efficiency. In comparing *Cryptosporidium* removal by sand, dual media (anthracite/sand), and trimedia (anthracite/sand/garnet) filters, no difference was observed near neutral pH. However, at pH 5.7, removal increased significantly in the sand filter and it outperformed the other filter media configurations. The authors found no apparent explanation for this behavior. There was no observable effect of a turbidity spike on *Cryptosporidium* removal.

Significance of Conventional and Direct Filtration Studies

The performance of treatment plants under current regulations is a significant factor in determining the need for additional treatment. As described in section IV.A, the proposed *Cryptosporidium* treatment requirements associated with LT2ESWTR risk bins for filtered systems are based, in part, on an estimate that conventional plants in compliance with

the IESWTR achieve an average of 3 log *Cryptosporidium* removal. The following discussion illustrates why EPA believes that available data support this estimate.

While *Cryptosporidium* removal at full scale plants is difficult to quantify due to limitations with analytical methods, pilot scale studies show that reductions in aerobic spores and total particle counts are often conservative indicators of filtration plant removal efficiency for *Cryptosporidium* (Dugan *et al.* 2001, McTigue *et al.* 1998, Yates *et al.* 1998, Emelko *et al.* 1999 and 2000). Surveys of full scale plants have reported average reductions near 3 log for both aerobic spores (Nieminski and Bellamy, 2000) and total particle counts (McTigue *et al.* 1998). Consequently, these findings are consistent with an estimate that average removal of *Cryptosporidium* by filtration plants is approximately 3 log.

Pilot scale *Cryptosporidium* spiking studies (Dugan *et al.* 2001, Huck *et al.* 2000, Emelko *et al.* 2000, McTigue *et al.* 1998, Patania *et al.* 1995) suggest that a conventional treatment plant has the potential to achieve greater than 5 log removal of *Cryptosporidium* under optimal conditions. However, these high removals are typically observed at very low filter effluent turbidity values, and the data show that removal efficiency can decrease substantially over the course of a filtration cycle or if coagulation is not optimized (Dugan *et al.* 2001, Huck *et al.* 2000, Emelko *et al.* 2000, Harrington *et al.* 2001). Removal efficiency also appears to be impacted by source water quality (Dugan *et al.* 2001, McTigue *et al.* 1998). Given these considerations, EPA believes that 3 log is a reasonable estimate of average *Cryptosporidium* removal efficiency for conventional treatment plants in compliance with the IESWTR or LT1ESWTR.

The Stage 2 M–DBP Advisory Committee did not address direct filtration plants, which lack the sedimentation basin of a conventional treatment train, but recommended that EPA address these plants in the LT2ESWTR proposal (65 FR 83015, December 29, 2000) (USEPA 2000a). While some studies have observed similar levels of *Cryptosporidium* removal in direct and conventional filtration plants (Nieminski and Ongerth, 1995, Ongerth and Pecoraro 1995), EPA has concluded that the majority of available data support a lower estimate of *Cryptosporidium* removal efficiency for direct filtration plants.

As described in section IV.C.5, pilot and full scale studies demonstrate that sedimentation basins, which are absent in direct filtration, can achieve 0.5 log or greater *Cryptosporidium* reduction (Dugan *et al.* 2001, Patania *et al.* 1995, Edzwald and Kelly 1998, Payment and Franco 1993, Kelley *et al.* 1995). In addition, Patania *et al.* (1995) observed direct filtration to achieve less *Cryptosporidium* removal than conventional treatment, and McTigue *et al.* (1998) found a higher incidence of *Cryptosporidium* in the treated water of direct filtration plants. Given these findings, EPA has estimated that direct filtration plants achieve an average of 2.5 log *Cryptosporidium* reduction (*i.e.*, 0.5 log less than conventional treatment).

i. Dissolved air flotation. Dissolved air flotation (DAF) is a solid-liquid separation process that can be used in conventional treatment trains in place of gravity sedimentation. DAF takes advantage of the buoyancy of oocysts by floating oocyst/particle complexes to the surface for removal. In DAF, air is dissolved in pressurized water, which is then released into a flotation tank containing flocculated particles. As the water enters the tank, the dissolved air forms small bubbles that collide with and attach to floc particles and float to the surface (Gregory and Zabel, 1990).

In comparing DAF with gravity sedimentation, Plummer *et al.* (1995) observed up to 0.81 log removal of oocysts in the gravity sedimentation process, while DAF achieved 0.38 to 3.7 log removal, depending on coagulant dose. Edzwald and Kelley (1998) demonstrated a 3 log removal of oocysts using DAF, compared with a 1 log removal using gravity sedimentation in the clarification process before filtration. In bench scale testing by Harrington *et al.* (2001), DAF averaged 0.5 log higher removal of *Cryptosporidium* than gravity sedimentation. Based on these results, EPA has concluded that a treatment plant using DAF plus filtration can achieve levels of *Cryptosporidium* removal equivalent to or greater than a conventional treatment plant with gravity sedimentation.

b. *Slow sand filtration.* Slow sand filtration is a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms. For the LT2ESWTR proposal, EPA has reviewed two additional studies of slow sand filtration.

Fogel *et al.* (1993) evaluated removal efficiencies for *Cryptosporidium* and Giardia with a full scale slow sand filtration plant. The removals ranged from 0.1–0.5 log for *Cryptosporidium* and 0.9–1.4 log for Giardia. Raw water turbidity ranged from 1.3 to 1.6 NTU and decreased to 0.35–0.31 NTU after filtration. The authors attributed the low *Cryptosporidium* and Giardia removals to the relatively poor grade of filter media and lower water temperature. The sand had a higher uniformity coefficient than recommended by design standards. This creates larger pore spaces within the filter bed that retard biological removal capacity. Lower water temperatures (1 °C) also decreased biological activity in the filter media.

Hall *et al.* (1994) examined the removal of *Cryptosporidium* with a pilot scale slow sand filtration plant. *Cryptosporidium* removals ranged from 2.8 to 4.3 log after filter maturation, with an average of 3.8 log (at least one week after filter scraping). Raw water turbidity ranged from 3.0 NTU to 7.5 NTU for three of four runs and 15.0 NTU for a fourth run. Filtered water turbidity was 0.2 to 0.4 NTU, except for the fourth run which had 2.5 NTU filtered water turbidity. This study also included an investigation of *Cryptosporidium* removal during filter start-up where the filtration rate was slowly increased over a 4 day period. Results indicate that filter ripening did not appear to affect *Cryptosporidium* removal.

The study by Fogel *et al.* is significant because it indicates that a slow sand filtration plant may achieve less than 2 log removal of *Cryptosporidium* removal while being in compliance with the effluent turbidity requirements of the IESWTR and LT1ESWTR. The authors attributed this poor performance to the filter being improperly designed, which, if correct, illustrates the importance of proper design for removal efficiency in slow sand filters. In contrast, the study by Hall *et al.* (1994) supports other work (Schuler and Ghosh 1991, Timms *et al.* 1995) in finding that slow sand filtration can achieve *Cryptosporidium* removal greater than 3 log. Overall, this body of work appears to show that slow sand filtration has the potential to achieve *Cryptosporidium* removal efficiencies similar to that of a conventional plant, but proper design and operation are critical to realizing treatment goals.

c. *Diatomaceous earth filtration.* Diatomaceous earth filtration is a process in which a precoat cake of filter media is deposited on a support membrane and additional filter media is continuously added to the feed water to maintain the permeability of the filter cake. Since the IESWTR and LT1ESWTR, EPA has reviewed one new study of DE filtration (Ongerth and Hutton 2001). It supports the findings of

earlier studies (Schuler and Gosh 1990, Ongerth and Hutton 1997) in showing that a well designed and operated DE plant can achieve *Cryptosporidium* removal equivalent to a conventional treatment plant (*i.e.*, average of 3 log).

d. *Other filtration technologies.* In today's proposal, information about bag filters, cartridge filters, and membranes, including criteria for awarding *Cryptosporidium* treatment credit, is presented in section IV.C as part of the microbial toolbox. Section IV.C also addresses credit for pretreatment options like presedimentation basins and bank filtration.

e. *Inactivation.* Substantial advances in understanding of *Cryptosporidium* inactivation by ozone, chlorine dioxide, and UV have been made following the IESWTR and LT1ESWTR. These advances have allowed EPA to develop criteria to award *Cryptosporidium* treatment credit for these disinfectants. Relevant information is summarized next, with additional information sources noted.

i. Ozone and chlorine dioxide. With the completion of several major studies, EPA has acquired sufficient information to develop standards for the inactivation of *Cryptosporidium* by ozone and chlorine dioxide. For both of these disinfectants, today's proposal includes CT tables that specify a level of *Cryptosporidium* treatment credit based on the product of disinfectant concentration and contact time.

For ozone, the CT tables in today's proposal were developed through considering four sets of experimental data: Li *et al.* (2001), Owens *et al.* (2000), Oppenheimer *et al.* (2000), and Rennecker *et al.* (1999). Chlorine dioxide CT tables are based on three experimental data sets: Li *et al.* (2001), Owens *et al.* (1999), and Ruffell *et al.* (2000). Together these studies provide a large body of data that covers a range of water matrices, both laboratory and natural. While the data exhibit variability, EPA believes that collectively they are sufficient to determine appropriate levels of treatment credit as a function of disinfection conditions. CT tables for ozone and chlorine dioxide inactivation of *Cryptosporidium* are presented in Section IV.C.14 of this preamble.

ii. Ultraviolet light. A major recent development is the finding that UV light is highly effective for inactivating *Cryptosporidium* and Giardia at low doses. Research prior to 1998 had indicated that very high doses of UV light were required to achieve substantial disinfection of protozoa. However, as noted previously, these results were largely based on the use of in vitro assays, which were later shown to substantially overestimate the UV doses required to prevent infection (Clancy *et al.* 1998, Bukhari *et al.* 1999, Craik *et al.* 2000). Recent research using in vivo assays (*e.g.*, neonatal mouse infectivity) and cell culture techniques to measure infectivity has provided strong evidence that both *Cryptosporidium* and Giardia are highly sensitive to low doses of UV.

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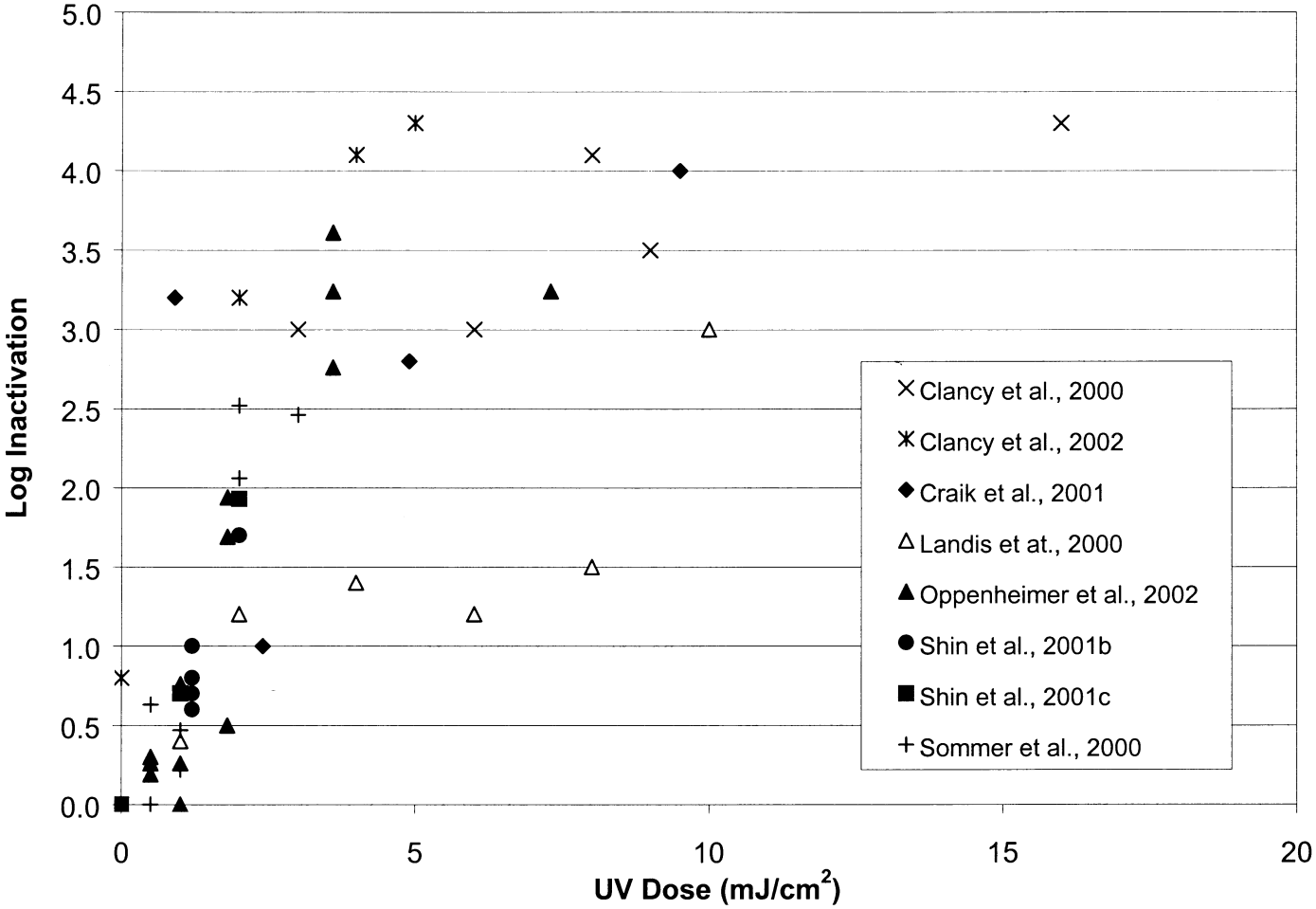

Figure III-5.-- Inactivation of *Cryptosporidium* by UV Light

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Figure III–5 presents data from selected studies of UV inactivation of *Cryptosporidium*. While the data in Figure III–5 show substantial scatter, they are consistent in demonstrating a high level of inactivation at relatively low UV doses. These studies generally demonstrated at least 3 log *Cryptosporidium* inactivation at UV doses of 10 mJ/cm ^{2} and higher. In comparison, typical UV dose for drinking water disinfection are 30 to 40 mJ/cm ^{2}. A recent investigation by Clancy *et al.* (2002) showed that UV light at 10 mJ/cm ^{2} provided at least 4 log inactivation of five strains of *Cryptosporidium* that are infectious to humans. Studies of UV inactivation of Giardia have reported similar results (Craik *et al.* 2000, Mofidi *et al.* 2002, Linden *et al.* 2002, Campbell and Wallis 2002, Hayes *et al.* 2003).

In addition to efficacy for protozoa inactivation, data indicate that UV disinfection does not promote the formation of DBPs (Malley *et al.* 1995, Zheng *et al.* 1999). Malley *et al.* (1995) evaluated DBP formation in a number of surface and ground waters with UV doses between 60 and 200 mJ/cm^2. UV light did not directly form DBPs, such as trihalomethanes (THM) and haloacetic acids (HAA), and did not alter the concentration or species of DBPs formed by post-disinfection with chlorine or chloramines. A study by Zheng *et al.* (1999) reported that applying UV light following chlorine disinfection had little impact on THM and HAA formation. In addition, data suggest that photolysis of nitrate to nitrite, a potential concern with certain types of UV lamps, will not result in nitrite levels near the MCL under typical drinking water conditions (Peldszus *et al.* 2000, Sharpless and Linden 2001).

These studies demonstrate that UV light is an effective technology for inactivating Giardia and *Cryptosporidium*, and that it does not form DBPs at levels of concern in drinking water. Section IV.C.15 describes proposed criteria for awarding treatment credit for UV inactivation of *Cryptosporidium*, *Giardia lamblia*, and viruses. These criteria include UV dose tables, validation testing, and monitoring standards. In addition, EPA is preparing a UV Disinfection Guidance Manual with information on design, testing, and operation of UV systems. A draft of this guidance is available in the docket for today's proposal (*http://www.epa.gov/edocket/*).

iii. Significance of new information on inactivation. The research on ozone, chlorine dioxide, and UV light described in this proposal has made these disinfectants available for systems to use in meeting additional *Cryptosporidium* treatment requirements under LT2ESWTR. This overcomes a significant limitation to establishing inactivation requirements for *Cryptosporidium* that existed when the IESWTR was developed. The Stage 1 Advisory Committee recognized the need for inactivation criteria if EPA were to consider a risk based proposal

for *Cryptosporidium* in future rulemaking (62 FR 59498, November 3, 1997) (USEPA 2000b). The CT tables for ozone and chlorine dioxide provide such criteria. In addition, the availability of UV furnishes another relatively low cost tool to achieve *Cryptosporidium* inactivation and DBP control.

While no single treatment technology is appropriate for all systems, EPA believes that these disinfectants, along with the other management and treatment options in the microbial toolbox presented in section IV.C, make it feasible for systems to meet the additional *Cryptosporidium* treatment requirements in today's proposal.

IV. Discussion of Proposed LT2ESWTR Requirements

A. Additional Cryptosporidium Treatment Technique Requirements for Filtered Systems

1. What Is EPA Proposing Today?

a. *Overview of framework approach.* EPA is proposing treatment technique requirements to supplement the existing requirements of the SWTR, IESWTR, and LT1ESWTR (see section II.B). The proposed requirements will achieve increased protection against *Cryptosporidium* in public water systems that use surface water or ground water under the direct influence of surface water as sources. Under this proposal, filtered systems will be assigned to one of four risk categories (or ''bins''), based on the results of source water *Cryptosporidium* monitoring. Systems assigned to the lowest risk bin incur no additional treatment requirements, while systems assigned to higher risk bins must reduce *Cryptosporidium* levels beyond IESWTR and LT1ESWTR requirements. Systems will comply with additional *Cryptosporidium* treatment requirements by selecting treatment and management strategies from a ''microbial toolbox'' of control options.

Today's proposal reflects recommendations from the Stage 2 M–DBP Federal Advisory Committee (65 FR 83015, December 29, 2000) (USEPA 2000a), which described this approach as a ''microbial framework''. This approach targets additional treatment requirements to those systems with the highest source water *Cryptosporidium* levels and, consequently, the highest vulnerability to this pathogen. In so doing, today's proposal builds upon the current treatment technique requirement for *Cryptosporidium* under which all filtered systems must achieve at least a 2 log reduction, regardless of source water quality. The intent of this proposal is to assure that public water systems with the higher risk source water achieve a level of public health protection commensurate with systems with less contaminated source water.

b. *Monitoring requirements.* Today's proposal requires systems to monitor their source water (influent water prior to treatment plant) for *Cryptosporidium*, *E. coli*, and turbidity. The purpose of the monitoring is to assess source water *Cryptosporidium* levels and, thereby, classify systems in different risk bins. Proposed monitoring requirements for large and small systems are summarized in Table IV–I and are characterized in the following discussion.

Large Systems

Large systems (serving at least 10,000 people) must sample their source water at least monthly for *Cryptosporidium*, *E. coli*, and turbidity for a period of 2 years, beginning no later than 6 months after LT2ESWTR promulgation. Systems may sample more frequently (*e.g.*, twice-per-month, once-per-week), provided the same sampling frequency is used throughout the 2-year monitoring period. As described in section IV.A.1.c, systems that sample more frequently (at least twice-per-month) use a different calculation that is potentially less conservative to determine their bin classification.

The purpose of requiring large systems to collect *E. coli* and turbidity data is to further evaluate these parameters as indicators to identify drinking water sources that are susceptible to high concentrations of *Cryptosporidium*. As described next, these data will be applied to small system LT2ESWTR monitoring.

Small Systems

EPA is proposing a 2-phase monitoring strategy for small systems (serving fewer than 10,000 people) to reduce their monitoring burden. This approach is based on Information Collection Rule and ICRSS data indicating that systems with low source water *E. coli* levels are likely to have low *Cryptosporidium* levels, such that additional treatment would not be required under the LT2ESWTR. Under this approach, small systems must initially conduct one year of bi-weekly sampling (one sample every two weeks) for *E. coli*, beginning 2.5 years after LT2ESWTR promulgation. Small systems are triggered into *Cryptosporidium* monitoring only if the initial *E. coli* monitoring indicates a mean concentration greater than 10 *E. coli*/100 mL for systems using a reservoir or lake as their primary source or greater than 50 *E. coli*/100 mL for systems using a flowing stream as their primary source. Small systems that exceed these *E. coli* trigger values must conduct one year of twice-per-month *Cryptosporidium* sampling, beginning 4 years after LT2ESWTR promulgation.

The analysis supporting the proposed *E. coli* values that trigger *Cryptosporidium* monitoring by small systems is presented in Section IV.A.2. However, as recommended by the Stage 2 M–DBP Advisory Committee, EPA will evaluate *Cryptosporidium* indicator relationships in the LT2ESWTR monitoring data collected by large systems. If these data support the use of different indicator levels to trigger small system *Cryptosporidium* monitoring, EPA will issue guidance with recommendations. The proposed LT2ESWTR allows States to specify alternative indicator values for small systems, based on EPA guidance.

TABLE IV–1.—LT2ESWTR MONITORING REQUIREMENTS

Public water systems	Monitoring begins	Monitoring duration	Monitoring parameters and sample frequency requirements		
			Cryptosporidium	*E. coli*	Turbidity
Large systems (serving 10,000 or more people).	6 months after promulgation of LT2ESWTR [a].	2 years	minimum 1 sample/month [b].	minimum 1 sample/month [b].	minimum 1 measurement/month [b].
Small systems (serving fewer than 10,000 people).	30 months (2½ years) after promulgation of LT2ESWTR.	1 year	See following rows	1 sample every two weeks.	N/A

TABLE IV–1.—LT2ESWTR MONITORING REQUIREMENTS—Continued

Public water systems	Monitoring begins	Monitoring duration	Monitoring parameters and sample frequency requirements		
			Cryptosporidium	*E. coli*	Turbidity
Possible additional monitoring requirement for *Cryptosporidium*. If small systems exceed *E. coli* trigger levels [c], then * * *					
Small systems (serving fewer than 10,000 people) [c].	48 months (4 years) after promulgation of LT2ESWTR.	1 year	2 samples/month	N/A	N/A.

[a] Public water systems may use equivalent previously collected (grandfathered) data to meet LT2ESWTR requirements. See section IV.A.1.d for details.
[b] Public water systems may sample more frequently (*e.g.*, twice-per-month, once-per-week).
[c] Small systems must monitor for *Cryptosporidium* for one year, beginning 6 months after completion of *E. coli* monitoring, if the *E. coli* annual mean concentration exceeds 10/100 mL for systems using lakes/reservoir sources or 50/100 mL for systems using flowing stream sources.
N/A = Not applicable. No monitoring required.

Sampling Location

Source water samples must be representative of the intake to the filtration plant. Generally, sampling must be performed individually for each plant that treats a surface water source. However, where multiple plants receive all of their water from the same influent (*e.g.*, multiple plants draw water from the same pipe), the same set of monitoring results may be applicable to each plant. Typically, samples must be collected prior to any treatment, with exceptions for certain pretreatment processes. Directions on sampling location for plants using off-stream storage, presedimentation, and bank filtration are provided in section IV.C.

Systems with plants that use multiple water sources at the same time must collect samples from a tap where the sources are combined prior to treatment if available. If a blended source tap is not available, systems must collect samples from each source and either analyze a weighted composite (blended) sample or analyze samples from each source separately and determine a weighted average of the results.

Sampling Schedule

Large systems must submit a sampling schedule to EPA within 3 months after promulgation of the LT2ESWTR. Small systems must submit a sampling schedule for *E. coli* monitoring to their primacy agency within 27 months after rule promulgation; small systems required to monitor for *Cryptosporidium* must submit a *Cryptosporidium* sampling schedule within 45 months after promulgation. The sampling schedules must specify the calendar date on which the system will collect each sample required under the LT2ESWTR. Scheduled sampling dates should be evenly distributed throughout the monitoring period, but may be arranged to accommodate holidays, weekends, and other events when collecting or analyzing a sample would be problematic.

Systems must collect samples within 2 days before or 2 days after a scheduled sampling date. If a system does not sample within this 5-day window, the system will incur a monitoring violation unless either of the following two conditions apply:

(1) If extreme conditions or situations exist that may pose danger to the sample collector, or which are unforeseen or cannot be avoided and which cause the system to be unable to sample in the required time frame, the system must sample as close to the required date as feasible and submit an explanation for the alternative sampling date with the analytical results.

(2) Systems that are unable to report a valid *Cryptosporidium* analytical result for a scheduled sampling date due to failure to comply with analytical method quality control requirements (described in section IV.K) must collect a replacement sample within 14 days of being notified by the laboratory or the State that a result cannot be reported for that date. Systems must submit an explanation for the replacement sample with the analytical results. Where possible, the replacement sample collection date should not coincide with any other scheduled LT2ESWTR sampling dates.

Approved Analytical Methods and Laboratories

To ensure the quality of LT2ESWTR monitoring data, today's proposal requires systems to use approved methods for *Cryptosporidium*, *E. coli*, and turbidity analyses (see section IV.K for sample analysis requirements), and to have these analyses performed by approved laboratories (described in section IV.L).

Reporting

Because source water monitoring by large systems will begin 6 months after promulgation of the LT2ESWTR, EPA is proposing that monitoring results for large systems be reported directly to the Agency though an electronic data system (described in section IV.J), similar to the approach currently used under the Unregulated Contaminants Monitoring Rule (64 FR 50555, September 17, 1999) (USEPA 1999c). Small systems will report data to EPA or States, depending on whether States have assumed primacy for the LT2ESWTR.

Previously Collected Monitoring Results

EPA is proposing to allow systems to use previously collected (*i.e.*, grandfathered) *Cryptosporidium* monitoring data to meet LT2ESWTR monitoring requirements if the data are equivalent to data that will be collected under the rule (*e.g.*, sample volume, sampling frequency, analytical method quality control). Criteria for acceptance of previously collected data are specified in section IV.A.1.d.

Providing Additional Treatment Instead of Monitoring

Filtered systems are not required to conduct source water monitoring under the LT2ESWTR if the system currently provides or will provide a total of at least 5.5 log of treatment for *Cryptosporidium*, equivalent to meeting the treatment requirements of Bin 4 as shown in Table IV–4 (*i.e.*, the maximum required in today's proposal). Systems must notify EPA or the State not later than the date the system is otherwise required to submit a sampling schedule for monitoring and must install and operate technologies to provide a total of at least 5.5 log of treatment for *Cryptosporidium* by the applicable date in Table IV–23. Any filtered system that fails to complete LT2ESWTR monitoring requirements must meet the treatment requirements for Bin 4.

Ongoing Source Assessment and Second Round of Monitoring

Because LT2ESWTR treatment requirements are related to the degree of source water contamination, today's proposal contains provisions to assess changes in a system's source water

quality following initial risk bin classification. These provisions include source water assessment during sanitary surveys and a second round of monitoring.

Under 40 CFR 142.16(b)(3)(i), source water is one of the components that States must address during the sanitary surveys that are required for surface water systems. These sanitary surveys must be conducted every 3 years for community systems and every 5 years for non-community systems. EPA is proposing that if the State determines during the sanitary survey that significant changes have occurred in the watershed that could lead to increased contamination of the source water, the State may require systems to implement specific actions to address the contamination. These actions include implementing options from the microbial toolbox discussed in section IV.C.

EPA is proposing that systems conduct a second round of source water monitoring, beginning six years after systems are initially classified in LT2ESWTR risk bins. To prepare for this second round of monitoring, the Advisory Committee recommended that EPA initiate a stakeholder process four years after large systems complete initial bin classification. The purpose of the stakeholder process would be to review risk information, and to determine the appropriate analytical method, monitoring frequency, monitoring location, and other criteria for the second round of monitoring.

If EPA does not modify LT2ESWTR requirements through issuing a new regulation prior to the second round of monitoring, systems must carry out this monitoring according to the requirements that apply to the initial round of source water monitoring. Moreover, systems will be reclassified in LT2ESWTR risk bins based on the second round monitoring results and using the criteria specified in this section for initial bin classification. However, if EPA changes the LT2ESWTR risk bin structure to reflect a new analytical method or new risk information, systems will undergo a site specific risk characterization in accordance with the revised rule.

c. Treatment Requirements

i. Bin classification. Under the proposed LT2ESWTR, surface water systems that use filtration will be classified in one of four *Cryptosporidium* concentration categories (bins) based on the results of source water monitoring. As shown in Table IV–2, bin classification is determined by averaging the *Cryptosporidium* concentrations measured for individual samples.

TABLE IV–2.— BIN CLASSIFICATION TABLE FOR FILTERED SYSTEMS

If your average *Cryptosporidium* concentration [1] is . . .	Then your bin classification is . . .
Cryptosporidium <0.075/L	Bin 1.
0.075/L ≤ *Cryptosporidium* < 1.0/L.	Bin 2.
1.0/L ≤ *Cryptosporidium* < 3.0/L.	Bin 3.
Cryptosporidium ≥ 3.0/L ...	Bin 4.

[1] All concentrations shown in units of oocysts/L

The approach that systems will use to average individual sample concentrations to determine their bin classification depends on the number of samples collected and the length of the monitoring period. Systems serving at least 10,000 people are required to monitor for 24 months, and their bin classification must be based on the following:

(1) Highest twelve month running annual average for monthly sampling, or

(2) two year mean if system conducts twice-per-month or more frequent sampling for 24 months (*i.e.*, at least 48 samples).

Systems serving fewer than 10,000 people are required to collect 24 *Cryptosporidium* samples over 12 months if they exceed the *E. coli* trigger level, and their bin classification must be based on the mean of the 24 samples. As noted earlier, systems that fail to complete the required *Cryptosporidium* monitoring will be classified in Bin 4.

When determining LT2ESWTR bin classification, systems must calculate individual sample concentrations using the total number of oocysts counted, unadjusted for method recovery, divided by the volume assayed (see section IV.K for details). As described in Section IV.A.2, the ranges of *Cryptosporidium* concentrations that define LT2ESWTR bins reflect consideration of analytical method recovery and the percent of *Cryptosporidium* oocysts that are infectious. Consequently, sample analysis results will not be adjusted for these factors.

ii. Credit for treatment in place. A key parameter in determining additional *Cryptosporidium* treatment requirements is the credit that plants receive for treatment currently provided (*i.e.*, treatment in place). For baseline treatment requirements established by the SWTR, IESWTR, and LT1ESWTR that apply uniformly to filtered systems, the Agency has awarded credit based on the minimum removal that plants will achieve. Specifically, in the IESWTR and LT1ESWTR, EPA determined that filtration plants, including conventional, direct, slow sand, and DE, meeting the required filter effluent turbidity criteria will achieve at least 2 log removal of *Cryptosporidium*. Consequently, these plants were awarded a 2 log *Cryptosporidium* removal credit, which equals the maximum treatment required under these regulations.

The LT2ESWTR will supplement existing regulations by mandating additional treatment at certain plants based on site specific conditions (*i.e.*, source water *Cryptosporidium* level). When assessing the need for additional treatment beyond baseline requirements for higher risk systems, the Agency has determined that it is appropriate to consider the average removal efficiency achieved by treatment plants. As described in section III.D, EPA has concluded that conventional, slow sand, and DE plants in compliance with the SWTR, IESWTR, and LT1ESWTR achieve an average *Cryptosporidium* reduction of 3 log. Consequently, EPA is proposing to award these plants a 3 log credit towards *Cryptosporidium* treatment requirements under the LT2ESWTR. As noted previously, this approach is consistent with the Stage 2 M–DBP Agreement in Principle.

For other types of filtration plants, treatment credit under the LT2ESWTR differs. Conventional treatment is defined in 40 CFR 141.2 as a series of processes including coagulation, flocculation, sedimentation, and filtration, with sedimentation defined as a process for removal of solids before filtration by gravity or separation. Thus, plants with separation (*i.e.*, clarification) processes other than gravity sedimentation between flocculation and filtration, such as DAF, may be regarded as conventional treatment for purposes of awarding treatment credit under the LT2ESWTR. However, for direct filtration plants, which lack a sedimentation process, EPA is proposing a 2.5 log *Cryptosporidium* removal credit. Studies that support awarding direct filtration plants less treatment credit than conventional plants are summarized in section III.D.

EPA is unable to estimate an average log removal for other filtration technologies like membranes, bag filters, and cartridge filters, due to variability among products. As a result, credit for these devices must be determined by the State, based on product specific testing described in section IV.C or other criteria approved by the State.

Table IV–3 presents the credit proposed for different types of plants towards LT2ESWTR *Cryptosporidium* treatment requirements. As described in section IV.C.18, a State may award greater credit to a system that demonstrates through a State-approved protocol that it reliably achieves a higher level of *Cryptosporidium* removal. Conversely, a State may award less credit to a system where the State determines, based on site specific information, that the system is not achieving the degree of *Cryptosporidium* removal indicated in Table IV–3.

TABLE IV–3.—*Cryptosporidium* TREATMENT CREDIT TOWARDS LT2ESWTR REQUIREMENTS [1]

Plant type	Conventional treatment (includes softening)	Direct filtration	Slow sand or diatomaceous earth filtration	Alternative filtration technologies
Treatment credit	3.0 log	2.5 log	3.0 log	Determined by State [2].

[1] Applies to plants in full compliance with the SWTR, IESWTR, and LT1ESWTR as applicable
[2] Credit must be determined through product or site specific assessment

iii. Treatment requirements associated with LT2ESWTR bins

The treatment requirements associated with LT2ESWTR risk bins are shown in Table IV–4. The total *Cryptosporidium* treatment required for Bins 2, 3, and 4 is 4.0 log, 5.0 log, and 5.5 log, respectively. For conventional (including softening), slow sand, and DE plants that receive 3.0 log credit for compliance with current regulations, additional *Cryptosporidium* treatment of 1.0 to 2.5 log is required when classified in Bins 2–4. Direct filtration plants that receive 2.5 log credit for compliance with current regulations must achieve 1.5 to 3.0 log of additional *Cryptosporidium* treatment in Bins 2–4.

For systems using alternative filtration technologies, such as membranes or bag/cartridge filters, and classified in Bins 2–4, the State must determine additional treatment requirements based on the credit awarded to a particular technology. The additional treatment must be such that plants classified in Bins 2, 3, and 4 achieve the total required *Cryptosporidium* reductions of 4.0, 5.0, and 5.5 log, respectively.

TABLE IV–4.—TREATMENT REQUIREMENTS PER LT2ESWTR BIN CLASSIFICATION

If your bin classification is . . .	And you use the following filtration treatment in full compliance with the SWTR, IESWTR, and LT1ESWTR (as applicable), then your additional treatment requirements are . . .			
	Conventional filtration treatment (includes softening)	Direct filtration	Slow sand or diatomaceous earth filtration	Alternative filtration technologies
Bin 1	No additional treatment	No additional treatment	No additional treatment	No additional treatment.
Bin 2	1 log treatment [1]	1.5 log treatment [1]	1 log treatment [1]	As determined by the State [1, 3].
Bin 3	2 log treatment [2]	2.5 log treatment [2]	2 log treatment [2]	As determined by the State [2, 4].
Bin 4	2.5 log treatment [2]	3 log treatment [2]	2.5 log treatment [2]	As determined by the State [2, 5].

[1] Systems may use any technology or combination of technologies from the microbial toolbox.
[2] Systems must achieve at least 1 log of the required treatment using ozone, chlorine dioxide, UV, membranes, bag/cartridge filters, or bank filtration.
[3] Total *Cryptosporidium* removal and inactivation must be at least 4.0 log.
[4] Total *Cryptosporidium* removal and inactivation must be at least 5.0 log.
[5] Total *Cryptosporidium* removal and inactivation must be at least 5.5 log.

Plants can achieve additional *Cryptosporidium* treatment credit through implementing pretreatment processes like presedimentation or bank filtration, by developing a watershed control program, and by applying additional treatment steps like UV, ozone, chlorine dioxide, and membranes. In addition, plants can receive additional credit for existing treatment through achieving very low filter effluent turbidity or through a demonstration of performance. Section IV.C presents criteria for awarding *Cryptosporidium* treatment credit to a host of treatment and control options, including those listed here and others, which are collectively termed the ''microbial toolbox''.

Systems in Bin 2 can meet additional *Cryptosporidium* treatment requirements through using any option or combination of options from the microbial toolbox. In Bins 3 and 4, systems must achieve at least 1 log of the additional treatment requirement through using ozone, chlorine dioxide, UV, membranes, bag filtration, cartridge filtration, or bank filtration.

d. *Use of previously collected data.* Today's proposal allows systems with previously collected *Cryptosporidium* data (*i.e.*, data collected prior to the required start of monitoring under the LT2ESWTR) that are equivalent in sample number, frequency, and data quality to data that will be collected under the LT2ESWTR to use those data in lieu of conducting new monitoring. Specifically, EPA is proposing that *Cryptosporidium* sample analysis results collected prior to promulgation of the LT2ESWTR must meet the following criteria to be used for bin classification:

- Samples were analyzed by laboratories using validated versions of EPA Methods 1622 or 1623 and meeting the quality control criteria specified in these methods (USEPA 1999a, USEPA 1999b, USEPA 2001e, USEPA 2001f).
- Samples were collected no less frequently than each calendar month on a regular schedule, beginning no earlier than January 1999 (when EPA Method 1622 was first released as an interlaboratory-validated method).
- Samples were collected in equal intervals of time over the entire collection period (*e.g.*, weekly,

monthly). The allowances for deviations from a sampling schedule specified under IV.A.1.b for LT2ESWTR monitoring apply to grandfathered data.

• Samples were collected at the correct location as specified for LT2ESWTR monitoring. Systems must report the use of bank filtration, presedimentation, and raw water off-stream storage during sampling.

• For each sample, the laboratory analyzed at least 10 L of sample or at least 2 mL of packet pellet volume or as much volume as two filters could accommodate before clogging (applies only to filters that have been approved by EPA for use with Methods 1622 and 1623).

• The system must certify that it is reporting all *Cryptosporidium* monitoring results generated by the system during the time period covered by the previously collected data. This applies to samples that were (a) collected from the sampling location used for LT2ESWTR monitoring, (b) not spiked, and (c) analyzed using the laboratory's routine process for Method 1622 or 1623 analyses.

• The system must also certify that the samples were representative of a plant's source water(s) and the source water(s) have not changed.

If a system has at least two years of *Cryptosporidium* data collected before promulgation of the LT2ESWTR and the system does not intend to conduct new monitoring under the rule, the system must submit the data and the required supporting documentation to EPA no later than two months following promulgation of the rule. EPA will notify the system within four months following LT2ESWTR promulgation as to whether the data are sufficient for bin determination. Unless EPA notifies the system in writing that the previously collected data are sufficient for bin determination, the system must conduct source water *Cryptosporidium* monitoring as described in section IV.A.1.b of this preamble.

If a system intends to grandfather fewer than two years of *Cryptosporidium* data, or if a system intends to grandfather 2 or more years of previously collected data and also to conduct new monitoring under the rule, the system must submit the data and the required supporting documentation to EPA no later than eight months following promulgation of the rule. Systems must conduct monitoring as described in section IV.A.1.b until EPA notifies the system in writing that it has at least 2 years of acceptable data. See section IV.J for additional information on reporting requirements associated with previously collected data.

2. How Was This Proposal Developed?

The monitoring and treatment requirements for filtered systems proposed under the LT2ESWTR stem from the data and analyses described in this section and reflect recommendations made by the Stage 2 M–DBP Federal Advisory Committee (65 FR 83015) (USEPA 2000a).

a. *Basis for targeted treatment requirements.* Under the IESWTR, EPA established an MCLG of zero for *Cryptosporidium* at the genus level based on the public health risk associated with this pathogen. The IESWTR included a 2 log treatment technique requirement for medium and large filtered systems that controlled for *Cryptosporidium* as close to the MCLG as was then deemed technologically feasible, taking costs into consideration. The LT1ESWTR extended this requirement to small systems. Given the advances that have occurred subsequent to the IESWTR in available technology to measure and treat for *Cryptosporidium*, a key question for the LT2ESWTR was the extent to which *Cryptosporidium* should be further controlled to approach the MCLG of zero, considering technical feasibility, costs, and potential risks from DBPs.

The data and analysis presented in Section III of this preamble suggest wide variability in possible risk from *Cryptosporidium* among public water systems. This variability is largely due to three factors: (1) The broad distribution of *Cryptosporidium* occurrence levels among source waters, (2) disparities in the efficacy of treatment provided by plants, and (3) differences in the infectivity among *Cryptosporidium* isolates. EPA and the Advisory Committee considered this wide range of possible risks and the desire to address systems where the 2 log removal requirement established by the IESWTR and LT1ESWTR may not provide adequate public health protection.

A number of approaches were evaluated for furthering control of *Cryptosporidium*. One approach was to require all systems to provide the same degree of additional treatment for *Cryptosporidium* (*i.e.*, beyond that required by the IESWTR and LT1ESWTR). This approach could ensure that most systems, including those with poor quality source water, would be adequately protective. The uniformity of this approach has the advantage of minimizing transactional costs for determining what must be done by a particular system to comply. However, a significant downside is that it may require more treatment, with consequent costs, than is needed by many systems with low source water *Cryptosporidium* levels. In addition, there were concerns with the feasibility of requiring almost all surface water treatment plants to install additional treatment processes for *Cryptosporidium*.

A second approach was to base additional treatment requirements on a plant's source water *Cryptosporidium* level. Under this approach, systems monitor their source water for *Cryptosporidium*, and additional treatment is required only from those systems that exceed specified oocyst concentrations. This has the advantage of targeting additional public health protection to those systems with higher vulnerability to *Cryptosporidium*, while avoiding the imposition of higher treatment costs on systems with the least contaminated source water. In consideration of these advantages, the Advisory Committee recommended and EPA is proposing this second approach for filtered systems under the LT2ESWTR.

b. *Basis for bin concentration ranges and treatment requirements.* The proposed LT2ESWTR will classify plants into different risk bins based on the source water *Cryptosporidium* level, and the bin classification will determine the extent to which additional treatment beyond IESWTR and LT1ESWTR is required. Two questions were central in developing the proposed bin concentration ranges and additional treatment requirements:

• What is the risk associated with a given level of *Cryptosporidium* in a drinking water source?

• What degree of additional treatment should be required for a given source water *Cryptosporidium* level?

This section addresses these two questions by first summarizing how EPA assessed the risk associated with *Cryptosporidium* in drinking water, followed by a description of how EPA and the Advisory Committee used this type of information in identifying LT2ESWTR bin concentration ranges and treatment requirements. For additional information on these topics, see Economic Analysis for the LT2ESWTR (USEPA 2003a).

i. What is the risk associated with a given level of *Cryptosporidium* in a drinking water source? The risk of infection from *Cryptosporidium* in drinking water is a function of infectivity (*i.e.*, dose-response associated with ingestion) and exposure. Section III.B summarizes available data on *Cryptosporidium* infectivity. EPA conducted a meta-analysis of reported infection rates from human feeding

studies with 3 *Cryptosporidium* isolates. This analysis produced an estimate for the mean probability of infection given a dose of one oocyst near 0.09 (9%), with 10th and 90th percentile confidence values of 0.011 and 0.22, respectively.

Exposure to *Cryptosporidium* depends on the concentration of oocysts in the source water, the efficiency of treatment plants in removing oocysts, and the volume of water ingested (exposure can also occur through interactions with infected individuals). Based on data presented in section III.D, EPA has estimated that filtration plants in compliance with the IESWTR or LT1ESWTR reduce source water *Cryptosporidium* levels by 2 to 5 log (99% to 99.999%), with an average reduction near 3 log. For drinking water consumption, EPA uses a distribution, derived from the United States Department of Agriculture's (USDA) 1994–96 Continuing Survey of Food Intakes by Individuals, with a mean value of 1.2 L/day. Average annual days of exposure to drinking water in CWS, non-transient non-community water systems (NTNCWS), and transient non-community water systems (TNCWS) are estimated at 350 days, 250 days, and 10 days, respectively. (The Economic Analysis for the LT2ESWTR (USEPA 2003a) provides details on all parameters listed here, as well as morbidity, mortality, and other risk factors.)

Using an estimate of 1.2 L/day consumption and a mean probability of infection of 0.09 for one oocyst ingested, the daily risk of infection (DR) is as follows:

$$DR = (\text{oocysts/L in source water}) \times (\text{percent remaining after treatment}) \times (1.2\ \text{L/day}) \times (0.09).$$

The annual risk (AR) of infection for a CWS is

$$AR = 1 - (1 - DR)^{350}$$

where 350 represents days of exposure in a CWS.

Table IV–5 presents estimates of the mean annual risk of infection by *Cryptosporidium* in CWSs for selected source water infectious oocyst concentrations and filtration plant removal efficiencies.

TABLE IV–5.—ANNUAL RISK OF *Cryptosporidium* INFECTION IN CWSS THAT FILTER, AS A FUNCTION OF SOURCE WATER INFECTIOUS OOCYST CONCENTRATION AND TREATMENT EFFICIENCY

Source water concentration (infectious oocysts per liter)	Mean annual risk of infection for different levels of treatment efficiency (log removal) [1]			
	2 log	3 log	4 log	5 log
0.0001	3.8E–05	3.8E–06	3.8E–07	3.8E–08
0.001	3.7E–04	3.8E–05	3.8E–06	3.8E–07
0.01	3.7E–03	3.7E–04	3.8E–05	3.8E–06
0.1	3.7E–02	3.7E–03	3.7E–04	3.8E–05
1	0.31	3.7E–02	3.7E–03	3.7E–04
10	0.89	0.31	3.7E–02	3.7E–03

[1] Scientific notation (E^{-x}) designates 10^{-x}

For example, Table IV–5 shows that if a filtration plant had a mean concentration of infectious *Cryptosporidium* in the source water of 0.01 oocysts/L, and the filtration plant averaged 3 log removal, the mean annual risk of infection by *Cryptosporidium* is estimated as 3.7×10^{-4} (3.7 infections per 10,000 consumers).

ii. What degree of additional treatment should be required for a given source water *Cryptosporidium* level? In order to develop targeted treatment requirements for the LT2ESWTR, it was necessary to identify a source water *Cryptosporidium* level above which additional treatment by filtered systems would be required. Based on the type of risk information shown in Table IV–5, EPA and Advisory Committee deliberations focused on mean source water *Cryptosporidium* concentrations in the range of 0.01 to 0.1 oocysts/L as appropriate threshold values for prescribing additional treatment.

Analytical method and sampling constraints were a significant factor in setting the specific *Cryptosporidium* level that triggers additional treatment by filtered systems. The number of samples that systems can be required to analyze for *Cryptosporidium* is limited. Consequently, if the bin threshold concentration for additional treatment was set near 0.01 oocysts/L, systems could exceed this level due to a very low number of oocysts being detected. For example, if systems took monthly 10 L samples and bin classification was based on a maximum running annual average, then a system would exceed a mean concentration of 0.01 oocysts/L by counting only 2 oocysts in 12 samples. Given the variability associated with *Cryptosporidium* analytical methods, the Advisory Committee did not support requiring additional treatment for filtered systems based on so few counts.

Another concern related to analytical method limitations was systems being misclassified in a lower bin. For example, if a system had a true mean concentration at or just above 0.1 oocysts/L, the mean that the system would determine through monitoring might be less than 0.1 oocyst/L. Thus, if the bin threshold for additional treatment was set at 0.1 oocysts/L, a number of systems with true mean concentrations above this level would be misclassified in the lower bin with no additional treatment required. This type of error, described in more detail in the next section, is a function of the number of samples collected and variability in method performance.

In consideration of the available information on *Cryptosporidium* risk, as well as the performance and feasibility of analytical methods, EPA is proposing that the source water threshold concentration for requiring additional *Cryptosporidium* treatment by filtered systems be established at a mean level of 0.075 oocysts/L. This is the level recommended by the Advisory Committee, and it affords a high likelihood that systems with true mean *Cryptosporidium* concentrations of 0.1 oocysts/L or higher will provide additional treatment under the rule.

Beyond identifying this first threshold, it was also necessary to determine *Cryptosporidium* concentrations that would demarcate higher risk bins. With respect to the concentration range that each bin should comprise, EPA and the Advisory Committee dealt with two opposing factors: bin misclassification and equitable risk reduction.

As described in the next section, a monthly monitoring program involving EPA Methods 1622 or 1623 can characterize a system's mean *Cryptosporidium* concentration within a

0.5 log (factor of 3.2) margin with a high degree of accuracy. However, the closer a system's true mean concentration is to a bin boundary, the greater the likelihood that the system will be misclassified into the wrong bin due to limitations in sampling and analysis. Accordingly, by establishing bins that cover a wide concentration range, the likelihood of system misclassification is reduced.

However, a converse factor relates to equitable protection from risk. Because identical treatment requirements will apply to all systems in the same bin, systems at the higher concentration end of a bin will achieve less risk reduction relative to their source water pathogen levels than systems at the lower concentration end of a bin. Thus, bins with a narrow concentration range provide a more uniform level of public health protection.

In balancing these factors and to account for the wide range of possible source water concentrations among different systems as indicated by Information Collection Rule and ICRSS data, the Advisory Committee recommended and EPA is proposing a second bin threshold at a mean level of 1.0 oocysts/L and a third bin threshold at a mean level of 3.0 oocysts/L. Information Collection Rule and ICRSS data indicate that few, if any, systems would measure mean *Cryptosporidium* concentrations greater than 3.0 oocysts/L, so there was not a need to establish a bin threshold above this value. Thus, the LT2ESWTR proposal includes the following four bins for classifying filtered systems: Bin 1: <0.075/L; Bin 2: ≥0.075 to <1.0/L; Bin 3: ≥1.0/L to <3.0/L; and Bin 4: ≥3.0/L (oocysts/L).

With respect to additional *Cryptosporidium* treatment for systems in Bins 2–4, values were considered ranging from 0.5 to 2.5 log and greater. As recommended by the Advisory Committee, EPA is proposing 1.0 log additional treatment for conventional plants in Bin 2. This level of treatment will ensure that systems classified in Bin 2 will achieve treated water *Cryptosporidium* levels comparable to systems in Bin 1, the lowest risk bin. In contrast, if systems in Bin 2 provided only 0.5 log additional treatment then those systems with mean source water concentrations in the upper part of Bin 2 would have higher levels of *Cryptosporidium* in their finished water than systems in Bin 1.

In consideration of the much greater potential vulnerability of systems in the highest risk bins, the Advisory Committee recommended additional treatment requirements of 2.0 log and 2.5 log for conventional plants in Bins 3 and 4, respectively. The Agency concurs with these recommendations and has incorporated them in today's proposal.

An important aspect of the proposed additional treatment requirements is that they are based, in part, on the current level of treatment provided by filtration plants. As noted earlier, the Advisory Committee assumed when developing its recommendations that conventional treatment plants in compliance with the IESWTR achieve an average of 3 log removal of *Cryptosporidium*. EPA has determined that available data, discussed in section III.D, support this assumption and has proposed a 3 log *Cryptosporidium* treatment credit for conventional plants under the LT2ESWTR. Thus, the additional treatment requirements for conventional plants in Bins 2, 3, and 4 translate to total requirements of 4.0, 5.0, and 5.5 log, respectively.

The Advisory Committee did not address additional treatment requirements for plants with treatment trains other than conventional, but recommended that EPA address such plants in the proposed LT2ESWTR and take comment. Based on treatment studies summarized in section III.D, EPA has concluded that plants with slow sand or DE filtration are able to achieve 3 log or greater removal of *Cryptosporidium* when in compliance with the IESWTR or LT1ESWTR. Because these plants can achieve comparable levels of performance to conventional treatment plants, EPA is proposing that slow sand and DE filtration plants also apply 1 to 2.5 log of additional treatment when classified in Bins 2–4.

Direct filtration differs from conventional treatment in that it does not include sedimentation or an equivalent clarification process prior to filtration. As described in section III.D, EPA has concluded that a sedimentation process can consistently achieve 0.5 log or greater removal of *Cryptosporidium*. The Agency is proposing that direct filtration plants in compliance with the IESWTR or LT1ESWTR receive a 2.5 log *Cryptosporidium* removal credit towards LT2ESWTR requirements. Accordingly, proposed additional treatment requirements for direct filtration plants in bins 2, 3, and 4 are 1.5 log, 2.5 log, and 3 log, respectively.

Section IV.C of this notice describes proposed criteria for determining *Cryptosporidium* treatment credits for other filtration technologies like membranes, bag filters, and cartridge filters. Due to the proprietary and product specific nature of these filtration devices, EPA is not able to propose a generally applicable credit for them. Rather, the criteria in section IV.C focus on challenge testing to establish treatment credit. Systems using these technologies that are classified in Bins 2–4 must work with their States to assess appropriate credit for their existing treatment trains. This will determine the level of additional treatment necessary to achieve the total treatment requirements for their assigned bins. EPA has developed guidance on challenge testing of bag and cartridge filters and membranes, which is available in draft form in the docket (*http://www.epa.gov/edocket/*).

In order to give systems flexibility in choosing strategies to meet additional *Cryptosporidium* treatment requirements, the Advisory Committee identified a number of management and treatment options, collectively called the microbial toolbox. The toolbox, which is described in section IV.C, contains components relating to watershed control, intake management, pretreatment, additional filtration processes, inactivation, and demonstrations of enhanced performance.

As recommended by the Advisory Committee, EPA is proposing that systems in Bin 2 can meet additional *Cryptosporidium* treatment requirements under the LT2ESWTR using any component or combination of components from the microbial toolbox. However, systems in Bins 3 and 4 must achieve at least 1 log of the additional treatment requirement using inactivation (UV, ozone, chlorine dioxide), membranes, bag filters, cartridge filters, or bank filtration. These specific control measures are proposed due to their ability to serve as significant additional treatment barriers for systems with high levels of pathogens.

c. *Basis for source water monitoring requirements.* The goal of monitoring under the LT2ESWTR is to correctly classify filtration plants into the four LT2ESWTR risk bins. The proposed sampling frequency, time frame, and averaging procedure for bin classification are intended to ensure that systems are accurately assigned to appropriate risk bins while limiting the burden of monitoring costs. The basis for the proposed monitoring requirements for large and small systems is presented in the following discussion.

i. Systems serving at least 10,000 people.

Sample Number and Frequency

Systems serving at least 10,000 people have two options for sampling under the

LT2ESWTR: (1) They can collect 24 monthly samples over a 2 year period and calculate their bin classification using the highest 12 month running annual average, or (2) They can collect 2 or more samples per month over the 2 year period and use the mean of all samples for bin classification.

These proposed requirements reflect recommendations by the Advisory Committee and are based on analyses of misclassification rates associated with different monitoring programs that were considered. EPA is concerned about systems with high concentrations of *Cryptosporidium* being misclassified in lower bins as well as systems with low concentrations being misclassified in higher bins. The first type of error could lead to systems not providing an adequate level of treatment while the second type of error could lead to systems incurring additional costs for unnecessary treatment.

A primary way that EPA analyzed misclassification rates was by considering the likelihood that a system with a true mean *Cryptosporidium* concentration that is a factor of 3.2 (0.5 log) above or below a bin boundary would be assigned to the wrong bin.

Probabilities were assessed for two cases:

- False negative: a system with a mean concentration of 0.24 oocysts/L (*i.e.*, factor of 3.2 above the Bin 1 boundary of 0.075 oocysts/L) is misclassified low in Bin 1.
- False positive: a system with a mean concentration of 0.024 oocysts/L (*i.e.*, factor of 3.2 below the Bin 1 boundary of 0.075 oocysts/L) is misclassified high in Bin 2.

Table IV–6 provides false negative and false positive rates as defined previously for different approaches to monitoring and bin classification that were evaluated. Results are shown for the following approaches:

- 48 samples with bin assignment based on arithmetic mean (*i.e.*, average of all samples).
- 24 samples with bin assignment based on highest 12 sample average, equivalent to the maximum running annual average (Max-RAA).
- 24 samples with bin assignment based on arithmetic mean.
- 12 samples with bin assignment based on the second highest sample result.
- 8 samples with bin assignment based on the maximum sample result.

These estimated misclassification rates were generated with a Monte Carlo analysis that accounted for the volume assayed, variation in source water *Cryptosporidium* occurrence, and variable method recovery. See Economic Analysis for the LT2ESWTR (USEPA 2003a) for details.

TABLE IV–6.—FALSE POSITIVE AND FALSE NEGATIVE RATES FOR MONITORING AND BINNING STRATEGIES CONSIDERED FOR THE LT2ESWTR

[In percentages]

Strategy	False positive [1]	False negative [2]
48 sample arithmetic mean	1.7	1.4
24 sample Max-RAA	5.3	1.7
24 sample arithmetic mean	2.8	6.2
12 sample second highest	47	1.1
8 sample maximum	66	1.0

[1] False positive rates calculated for systems with *Cryptosporidium* concentrations 0.5 log below the Bin 1 boundary of 0.075 oocysts/L.

[2] False negative rates calculated for systems with *Cryptosporidium* concentrations 0.5 log above the Bin 1 boundary of 0.075 oocysts/L.

The first two of these approaches, the 48 sample arithmetic mean and 24 sample Max-RAA, were recommended by the Advisory Committee and are proposed for bin classification under the LT2ESWTR because they have low false positive and false negative rates. As shown in Table IV–6, these strategies have false negative rates of 1 to 2%, meaning there is a 98 to 99% likelihood that a plant with an oocyst concentration 0.5 log above the Bin 1 boundary would be correctly assigned to Bin 2. The false positive rate is near 2% for the 48 sample arithmetic mean and 5% for the 24 sample Max-RAA. These rates indicate that a plant with an oocyst concentration 0.5 log below the Bin 1 boundary would have a 95 to 98% probability of being correctly assigned to Bin 1. Bin misclassification rates across a wide range of concentrations are shown in Economic Analysis for the LT2ESWTR (USEPA 2003a).

The 24 sample arithmetic mean had a slightly lower false positive rate than the 24 sample Max-RAA (2.8% vs. 5.3%) but the false negative rate of the arithmetic mean was almost 4 times higher. Consequently, a plant with a mean *Cryptosporidium* level above the Bin 1 boundary would be much more likely to be misclassified in Bin 1 using a 24 sample arithmetic mean than with a 24 sample Max-RAA. In order to increase the probability that systems with mean *Cryptosporidium* concentrations above 0.075 oocysts/L will provide additional treatment, EPA is proposing that if only 24 samples are taken, the maximum 12 month running annual average must be used to determine bin assignment.

Monitoring strategies involving only 12 and 8 samples were evaluated to determine if lower frequency monitoring could provide satisfactory bin classification. The results of this analysis indicate that these lower sample numbers are not adequate and could unfairly bias excessive treatment requirements. For example, results in Table IV–6 show that if plants were classified in bins based on the second highest of 12 samples or the highest of eight samples then low false negative rates could be achieved. A system with a mean *Cryptosporidium* level 0.5 log above the Bin 1 boundary would have a 99% chance of being appropriately classified in a bin requiring additional treatment under either strategy. However, the false positive rates associated with these low sample numbers are very high. A system with a mean oocyst concentration 0.5 log below the Bin 1 boundary would have a 47% probability of being incorrectly classified in Bin 2 using the second highest result among 12 samples, or a 66% likelihood of being misclassified in Bin 2 using the maximum result among 8 samples. Due to high false positive rates, these strategies are not proposed.

EPA also evaluated lower frequency monitoring strategies that had lower false positive rates, such as bin classification based on the mean of 12 samples, the third highest result of 12 samples, and the second highest of 8 samples. Each of these strategies, though, had an unacceptably high false negative rate, meaning that many systems with mean oocyst concentrations greater than the Bin 1 boundary would be misclassified low in Bin 1. Consequently, these strategies are inconsistent with the public health goal of the LT2ESWTR for systems with mean levels above 0.075 oocysts/L to provide additional treatment.

Increasing the number of samples used to compute the maximum running annual average above 24 also increased the number of annual averages computed, so it did not reduce the likelihood of false positives. Raising the number of samples used to compute an arithmetic mean above 48 did reduce bin misclassification rates, but the rates were already very small (1 to 2% for plants with levels 0.5 log above or below bin boundaries). For sources with *Cryptosporidium* concentrations very near or at bin boundaries, increasing the number of samples did not markedly improve the error rates, which remained near 50% at the bin boundaries.

In summary, EPA believes that the proposed sampling designs perform well for the purpose of classifying plants in LT2ESWTR risk bins and,

thereby, achieving the public health protection intended for the rule. More costly designs, involving more frequent sampling and analysis, provide only marginally improved performance. Less frequent sampling, though lower in cost, creates unacceptably high misclassification rates and would not provide for the targeted risk reduction goals of the rule.

No Adjustments for Method Recovery or Percent of Oocysts That Are Infectious

Two considerations in using *Cryptosporidium* monitoring data to project risk are (1) Fewer than 100% of oocysts in a sample are recovered and counted by the analyst and (2) not all the oocysts measured with Methods 1622/23 are viable and capable of causing infection. These two factors are offsetting in sign, in that oocyst counts not adjusted for recovery tend to underestimate the true concentration, while the total oocyst count may overestimate the infectious concentration that presents a health risk. Based on information described in this section, EPA is proposing that *Cryptosporidium* monitoring results be used directly to assign systems to LT2ESWTR risk bins and not be adjusted for either factor.

As described in section III.C, ICRSS matrix spike data indicate that average recovery of *Cryptosporidium* oocysts with Methods 1622/23 in a national monitoring program will be about 40%. There is no similar direct measure of the fraction of environmental oocysts that are infectious, but information related to this value can be derived from two sources: (1) A study where samples were analyzed with both Method 1623 and a cell culture-polymerase chain reaction (CC–PCR) test for oocyst infectivity, and (2) the structure of oocysts counted with Methods 1622 and 1623.

LeChevallier *et al.* (2003) conducted a study in which six natural waters were frequently tested for *Cryptosporidium* using both Method 1623 and a CC–PCR method to test for infectivity. *Cryptosporidium* oocysts were detected in 60 of 593 samples (10.1%) by Method 1623 and infectious oocysts were detected in 22 of 560 samples (3.9%) by the CC–PCR procedure. Recovery efficiencies for the two methods were similar. According to the authors, these results suggest that approximately 37% (22/60) of the *Cryptosporidium* oocysts detected by Method 1623 were viable and infectious.

In regard to oocyst structure, *Cryptosporidium* oocysts counted with Methods 1622/23 are characterized in one of three ways: (1) Internal structures, (2) amorphous structures, or (3) empty. Oocysts with internal structures are considered to have the highest likelihood of being infectious, while empty oocysts are believed to be non-viable (LeChevallier *et al.* 1997). During the ICRSS, 37% of the oocysts counted were characterized as having internal structures, 47% had amorphous structures, and 16% were empty. If it is assumed that empty oocysts could not be infectious, the mid-point value within the percentage range of counted oocysts that could have been infectious is 42%.

After considering this type of information, the Advisory Committee recommended that monitoring results not be adjusted upward for percent recovery, nor adjusted downward to account for the fraction of oocysts that are not infectious. While it is not possible to establish a precise value for either factor in individual samples, the data suggest that they may be of similar magnitude. EPA concurs with this recommendation and is proposing that systems be classified in bins under the LT2ESWTR using the total *Cryptosporidium* oocyst count, uncorrected for recovery, as measured using EPA Method 1622/23. The proposed LT2ESWTR risk bins are constructed to reflect this approach.

Data Collection To Support Use of a Microbial Indicator by Small Systems

As described in the next section, small systems will monitor for an indicator, currently proposed to be *E. coli*, to determine if they are required to sample for *Cryptosporidium*. The proposed *E. coli* levels that will trigger *Cryptosporidium* monitoring are based on Information Collection Rule and ICRSS data. However, to provide for a more extensive evaluation of *Cryptosporidium* indicator criteria, EPA is proposing that large systems measure *E. coli* and turbidity in their source water when they sample for *Cryptosporidium*. This was recommended by the Advisory Committee and will allow for possible development of alternative indicator levels or parameters (*e.g.*, turbidity in combination with *E. coli*) to serve as triggers for small system *Cryptosporidium* monitoring.

Time Frame for Monitoring

In recommending a time frame for LT2ESWTR monitoring, the Agency considered the trade-off between monitoring over a long period to better capture year-to-year fluctuations, and the desire to prescribe additional treatment quickly to systems identified as having high source water pathogen levels. Reflecting Advisory Committee recommendations, EPA is proposing that large systems evaluate their source water *Cryptosporidium* levels using 2 years of monitoring. This will account for some degree of yearly variability, without significantly delaying additional public health protection where needed.

ii. Systems serving fewer than 10,000 people.

Indicator Monitoring

In recognition of the relatively high cost of analyzing samples for *Cryptosporidium*, EPA and the Advisory Committee explored the use of indicator criteria to identify drinking water sources that may have high levels of *Cryptosporidium* occurrence. The goal was to find one or more parameters that could be analyzed at low cost and identify those systems likely to exceed the Bin 1 boundary of 0.075 oocysts/L. Data from the Information Collection Rule and ICRSS were evaluated for possible indicator parameters, including fecal coliforms, total coliforms, *E. coli*, viruses (Information Collection Rule only), and turbidity. Based on available data, *E. coli* was found to provide the best performance as a *Cryptosporidium* indicator, and the inclusion of other parameters like turbidity was not found to improve accuracy.

The next part of this section presents data that support *E. coli* mean concentrations of 10/100 mL and 50/100 mL as proposed screening levels that will trigger *Cryptosporidium* monitoring in reservoir/lake and flowing stream systems, respectively. It describes how *E. coli* and *Cryptosporidium* data from the Information Collection Rule and ICRSS were analyzed and shows the performance of different concentrations of *E. coli* as an indicator for systems that will exceed the Bin 1 boundary of 0.075 oocysts/L.

Information Collection Rule data were evaluated as maximum running annual averages (Information Collection Rule samples were collected once per month for 18 months) while ICRSS data were evaluated using an annual mean (ICRSS samples were collected twice per month for 12 months). In addition, as indicators were being evaluated it became apparent that it was necessary to analyze plants separately based on source water type, due to a significantly different relationship between *E. coli* and *Cryptosporidium* in reservoir/lake systems compared to flowing stream systems.

Analyzing the performance of an *E. coli* level as a screen to trigger *Cryptosporidium* monitoring under the proposed LT2ESWTR involved

evaluating each water treatment plant in the data set relative to two factors: (1) Did the plant *E. coli* level exceed the trigger value being assessed? and (2) Did the plant mean *Cryptosporidium* concentration exceed 0.075 oocysts/L? Accordingly, plants were sorted into four categories, based on *Cryptosporidium* and *E. coli* concentrations:

- Plants with *Cryptosporidium* < 0.075 oocysts/L that did not exceed the *E. coli* trigger level (Figure IV–1, box A)
- Plants with *Cryptosporidium* < 0.075 oocysts/L that exceeded the *E. coli* trigger level (Figure IV.1, box B)
- Plants with *Cryptosporidium* ≥ 0.075 oocysts/L that did not exceed the *E. coli* trigger level (Figure IV.1, box C)
- Plants with *Cryptosporidium* ≥ 0.075 oocysts/L that exceeded the *E. coli* trigger level (Figure IV.1, box D)

Summary data with *E. coli* trigger concentrations ranging from 5 to 100 per 100 mL are presented for Information Collection Rule and ICRSS data in Figures IV–2 and IV–3.

The performance of each *E. coli* level as a trigger for *Cryptosporidium* monitoring was evaluated based on false negative and false positive rates. False negatives occur when plants do not exceed the *E. coli* trigger value, but exceed a *Cryptosporidium* level of 0.075 oocysts/L. False positives occur when plants exceed the *E. coli* trigger value but do not exceed a *Cryptosporidium* level of 0.075 oocysts/L. The false negative rate is critical because it characterizes the ability of the indicator to identify those plants with high *Cryptosporidium* levels. In general, low false negative rates can be achieved by lowering the *E. coli* trigger concentration. However, when the *E. coli* trigger concentration is decreased, more plants with low *Cryptosporidium* levels in their source water exceed it. As a result, more plants incur false positives. Consequently, identifying an appropriate *E. coli* concentration to trigger *Cryptosporidium* monitoring involves balancing false negatives and false positives to minimize both.

Results of the indicator analysis for plants with flowing stream sources are shown in Figure IV–2. An *E. coli* trigger concentration of 50/100 mL produced zero false negatives for both data sets. This means that in these data sets, all plants that exceeded mean *Cryptosporidium* concentrations of 0.075 oocysts/L also exceeded the *E. coli* trigger concentration and would, therefore, be required to monitor. However, this trigger concentration had a significant false positive rate (*i.e.*, it was not highly specific in targeting only those plants with high *Cryptosporidium* levels). False positive rates were 57% (24/42) and 53% (9/17) with Information Collection Rule and ICRSS data, respectively. At a higher *E. coli* trigger concentration, such as 100/100 mL, the false negative rate increased to 12.5% (3/24) with Information Collection Rule data and 50% (2/4) with ICRSS data, while the false positive rate decreased to 43% (18/42) and 35% (6/17), respectively. Consequently, EPA is proposing a mean *E. coli* concentration of 50/100 mL as a trigger for *Cryptosporidium* monitoring by small systems with flowing stream sources.

Results of the indicator analysis for plants with reservoir/lake sources are shown in Figure IV–3. An *E. coli* trigger of 10/100 mL resulted in a false negative rate of 20% (2/10) with Information Collection Rule data and 67% (2/3) with ICRSS data (misclassified 2 out of 3 plants over 0.075 oocysts/L). Going to a lower concentration *E. coli* trigger, such as 5 per 100 mL, decreased the false negative rate in both the Information Collection Rule and ICRSS data sets by one plant, but increased the false positive rate from 20% to 43% (13/30) in the ICRSS data and from 24% to 39% (44/114) in the Information Collection Rule data. Based on these results, EPA is proposing that a mean *E. coli* concentration of 10/100 mL trigger small systems using lake/reservoir sources into monitoring for *Cryptosporidium*. While the false negative rate associated with this trigger value in the ICRSS data set is high, the ICRSS data set contains only 3 reservoir/lake plants that exceeded a *Cryptosporidium* level of 0.075 oocysts/L.

Due to limitations in the available data, the Advisory Committee did not recommend that large systems use the *E. coli* indicator screen, as *Cryptosporidium* monitoring is less of an economic burden for large systems. Rather, the Advisory Committee recommended that large systems sample for *E. coli* and turbidity when they monitor for *Cryptosporidium* under the LT2ESWTR. These data will then be used to verify or, if necessary, further refine the proposed indicator trigger values for small systems. EPA concurs with these recommendations and they are reflected in today's proposal.

The proposed monitoring schedule under the LT2ESWTR is set up to allow EPA and stakeholders to evaluate large system monitoring data for indicator relationships prior to the start of small system *E. coli* monitoring. After one year of large system monitoring is completed, EPA will begin analyzing monitoring data to assess whether alternative indicator strategies would be appropriate. Depending on the findings of this analysis, EPA may issue guidance to States on approving alternative indicator trigger strategies for small systems. Therefore, the proposed rule is written with the allowance for States to approve alternative indicator strategies.

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Breakdown of Plants into *Cryptosporidium* "bin"	Breakdown of Plants Using *E. coli* "Trigger"	
	Did not exceed trigger value	Exceeds trigger value
< 0.075 *Cryptosporidium* per L	**A**	**B**
≥ 0.075 *Cryptosporidium* per L	**C**	**D**

Calculations used to Assess Indicator Performance	
What percent of plants with ≥ 0.075 *Cryptosporidium* per L exceed the *E. coli* trigger?	**D / C + D)**
What percent of plants would be required to monitor for *Cryptosporidium*?	**(B + D) / (A + B + C + D)**

Figure IV-1.– Microbial Indicator System Template

Flowing Streams																
E. coli trigger level:	5 *E. coli* / 100 mL				10 *E. coli* / 100 mL				50 *E. coli* / 100 mL				100 *E. coli* / 100 mL			
Study:	ICR		ICRSS		ICR		ICRSS		ICR		ICRSS		ICR		ICRSS	
Did plant exceed *E. coli* trigger level?	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes
< 0.075 *Cryptosporidium* per L	6	36	2	15	7	35	5	12	18	24	8	9	24	18	11	6
≥ 0.075 *Cryptosporidium* per L	0	24	0	4	0	24	0	4	0	24	0	4	3	21	2	2
What percent of plants with ≥ 0.075 *Cryptosporidium* per L exceed the *E. coli* trigger?	100%		100%		100%		100%		100%		100%		88%		50%	
What percent of plants would be required to monitor for *Cryptosporidium*?	91%		90%		89%		76%		73%		62%		59%		38%	

Figure IV-2.– Summary of Flowing Stream Indicator Analysis for Information Collection Rule and ICRSS Data at Bin 1 Boundary of 0.075 Oocysts/L and *E. coli* Triggers of 5, 10, 50, and 100 per 100 mL

Reservoir / lakes																
E. coli trigger level:	5 *E. coli* / 100 mL				10 *E. coli* / 100 mL				50 *E. coli* / 100 mL				100 *E. coli* / 100 mL			
Study:	ICR		ICRSS		ICR		ICRSS		ICR		ICRSS		ICR		ICRSS	
Did plant exceed *E. coli* trigger level?	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes
< 0.075 *Cryptosporidium* per L	70	44	17	13	87	27	24	6	107	7	28	2	108	6	29	1
≥ 0.075 *Cryptosporidium* per L	1	9	1	2	2	8	2	1	8	2	3	0	9	1	3	0
What percent of plants with ≥ 0.075 *Cryptosporidium* per L exceed the *E. coli* trigger?	90%		67%		80%		33%		20%		0%		10%		0%	
What percent of plants would be required to monitor for *Cryptosporidium*?	43%		45%		28%		21%		7%		6%		6%		3%	

Figure IV-3.– Summary of Reservoir/lake Indicator Analysis Results for Information Collection Rule and ICRSS Data at Bin 1 Boundary of 0.075 Oocysts/L and Using *E. coli* Triggers of 5, 10, 50, and 100 per 100 mL

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Cryptosporidium Monitoring

Small systems that exceed the *E. coli* trigger must conduct *Cryptosporidium* monitoring, beginning 6 months after completion of *E. coli* monitoring. As recommended by the Advisory Committee, EPA is proposing that small systems collect 24 *Cryptosporidium* samples over a period of one year. This number of samples is the same as required for large systems, but the monitoring burden is targeted only on those plants that *E. coli* monitoring indicates to have elevated levels of fecal matter in the source water. By completing *Cryptosporidium* monitoring in one year, small systems will conduct a total of 2 years of monitoring to determine LT2ESWTR bin classification (including the one year of *E. coli* monitoring). This time frame is equivalent to the requirement for large systems, which monitor for *Cryptosporidium*, *E. coli*, and turbidity for 2 years.

The Stage 2 M–DBP Agreement in Principle recommended that EPA explore the feasibility of alternative, lower frequency, *Cryptosporidium* monitoring criteria for providing a conservative mean estimate in small systems. As described earlier, EPA has evaluated smaller sample sizes, such as systems taking 12 or 8 samples instead of 24 (see Table IV–6). However, EPA has concluded that these smaller sample sizes result in unacceptably high misclassification rates. For example, bin classification based on the second highest of 12 samples produces an estimated false positive rate of 47% for systems with a mean *Cryptosporidium* concentration 0.5 log below the Bin 1 boundary of 0.075/L. In comparison, bin classification based on the mean of 24 samples achieves a false positive rate of 2.8% for systems at this *Cryptosporidium* concentration. Consequently, EPA is proposing no alternatives to the requirement that small systems take at least 24 samples.

Small system bin classification will be determined by the arithmetic mean of the 24 samples collected over one year. Because the bin structure in the LT2ESWTR is based on annual mean *Cryptosporidium* levels, it is necessary that bin classification involve averaging samples over at least one year. Consequently, small systems will determine their bin classification by averaging results from all *Cryptosporidium* samples collected during their one year of monitoring.

iii. Future monitoring and reassessment. EPA is proposing that beginning 6 years after the initial bin classification, large and small systems conduct another round of monitoring to determine if source water conditions have changed to a degree that may warrant a revised bin classification. The Advisory Committee recommended that EPA convene a stakeholder process within 4 years after the initial bin classification to develop recommendations on how best to proceed with implementing this second round of monitoring. Unless EPA modifies the LT2ESWTR to allow for an improved analytical method or a revised bin structure based on new risk information, the second round of monitoring will be conducted under the same requirements that apply to the initial round of monitoring.

In addition, EPA is proposing to use the required assessment of the water source during sanitary surveys as an ongoing measure of whether significant changes in watersheds have occurred that may lead to increased contamination. Where the potential for increased contamination is identified, States must determine what follow-up actions by the system are necessary, including the possibility of the system providing additional treatment from the microbial toolbox.

d. *Basis for accepting previously collected data.* Members of the Advisory Committee had multiple objectives in recommending that EPA allow the use of previously collected (grandfathered) *Cryptosporidium* data. These include (1) giving credit for data collected by proactive utilities, (2) facilitating early determination of LT2ESWTR compliance needs and, thereby, allowing for early planning of appropriate treatment selection, (3) increasing laboratory capacity to meet demand for *Cryptosporidium* analysis under the LT2ESWTR, and (4) allowing utilities to improve their data set for bin determination by considering more than 2 years of data (*i.e.*, include data collected prior to effective date of LT2ESWTR). The latter objective incorporates the assumption that occurrence can vary from year to year, so that if more years of data are used in the bin determination, the source water concentration estimate will be a more accurate representation of the overall mean.

A significant issue with accepting previously collected data for making bin determinations is ensuring that the data are of equivalent quality to data that will be collected following LT2ESWTR promulgation. As noted previously, EPA is establishing requirements so that data collected under the LT2ESWTR will be similar in quality to data that were generated under the ICRSS. These requirements include the use of approved analytical methods and compliance with method quality control (QC) criteria, use of approved laboratories, minimum sample volume, and a sampling schedule with minimum frequency. For example, under the ICRSS, laboratories analyzed 10 L samples and (considered collectively) achieved a mean *Cryptosporidium* recovery of approximately 43% in spiked source water with a relative standard deviation (RSD) of 50%. EPA anticipates that laboratories conducting *Cryptosporidium* analysis for the LT2ESWTR will collectively achieve similar analytical method performance. Consequently, EPA expects previously collected data sets used under the LT2ESWTR to meet these standards and has established criteria for accepting previously collected data accordingly (see section IV.A.1.d).

Systems are requested, but not required, to notify EPA prior to promulgation of the LT2ESWTR of their intent to submit previously collected data. This will help EPA allocate the resources that will be needed to evaluate these data in order to make a decision on adequacy for bin determination. Systems that have at least 2 years of previously collected data to grandfather when the LT2ESWTR is promulgated and do not intend to conduct new monitoring under the rule are required to submit the previously collected data to EPA within 2 months following promulgation. This will enable EPA to evaluate the data and report back to the utility in sufficient time to allow, if needed, the utility to contract with a laboratory to conduct monitoring under the LT2ESWTR.

Systems that have fewer than 2 years of previously collected data to grandfather when the LT2ESWTR is promulgated, or that intend to grandfather 2 or more years of previously collected data and also conduct new monitoring under the rule, are required to submit the previously collected data to EPA within 8 months following promulgation. This will allow these utilities to continue to collect previously collected data in the 6 month period between promulgation and the date when monitoring under the LT2ESWTR must begin, plus a 2 month period for systems to compile the data and supporting documentation. Utilities may submit the data earlier than 8 months after promulgation if they acquire 2 years of previously collected data before this date.

Submitted grandfathered data sets must include all routine source water monitoring results for samples collected during the time period covered by the

grandfathered data set (*i.e.*, the time period between collection of the first and last samples in the data set). However, systems are not required under the LT2ESWTR to submit previously collected data for samples outside of this time period.

3. Request for Comment

EPA requests comments on all aspects of the monitoring and treatment requirements proposed in this section. In addition, EPA requests comment on the following issues:

Requirements for Systems That Use Surface Water for Only Part of the Year

Bin classification for the LT2ESWTR is based on the mean annual sourcewater *Cryptosporidium* level. Consequently, today's proposal requires *E. coli* and *Cryptosporidium* monitoring to be conducted over the full year. However, EPA recognizes that some systems use surface water for only part of the year. This occurs with systems that use surface water for part of the year (*e.g.*, during the summer) to supplement ground water sources and with systems like campgrounds that are in operation for only part of the year. Year round monitoring for these systems may present both logistic and economic difficulties. EPA is requesting comment on how to apply LT2ESWTR monitoring requirements to surface water systems that operate or use surface water for only part of the year. Possible approaches that may be considered for comment include the following:

Small public water systems that operate or use surface water for only part of the year could be required to collect *E. coli* samples at least bi-weekly during the period when they use surface water. If the mean *E. coli* concentration did not exceed the trigger level (*e.g.*, 10/100 mL for reservoirs/lakes or 50/100mL for flowing streams), systems could apply to the State to waive any additional *E. coli* monitoring. The State could grant the waiver, require additional *E. coli* monitoring, or require monitoring of an alternate indicator. If the mean *E. coli* concentration exceeded the trigger level, the State could require the system to provide additional treatment for *Cryptosporidium* consistent with Bin 4 requirements, or require monitoring of *Cryptosporidium* or an indicator, with the results potentially leading to additional *Cryptosporidium* treatment requirements.

Large public water systems that operate or use surface water for only part of the year could be required to collect *Cryptosporidium* samples (along with *E. coli* and turbidity) either twice-per-month during the period when they use surface water or 12 samples per year, whichever is smaller. Samples would be collected during the two years of the required monitoring period, and bin classification would be based on the highest average of the two years.

EPA requests comment on these and other approaches for both small and large systems.

Previously Collected Monitoring Data That Do Not Meet QC Requirements

EPA is proposing requirements for acceptance of previously collected monitoring data that are equivalent to requirements for data generated under the LT2ESWTR. The Agency is aware that systems will have previously collected *Cryptosporidium* data that do not meet all sampling and analysis requirements (*e.g.*, quality control, sample frequency, sample volume) proposed for data collected under the LT2ESWTR. However, the Agency has been unable to develop an approach for allowing systems to use such data for LT2ESWTR bin classification. This is due to uncertainty regarding the impact of deviations from proposed sampling and analysis requirements on data quality and reliability. For example, Methods 1622 and 1623 have been validated within the limits of the QC criteria specified in these methods. While very minor deviations from required QA/QC criteria may have only a minor impact on data quality, the Agency has not identified a basis for establishing alternative standards for data acceptability.

EPA requests comment on whether or under what conditions previously collected data that do not meet the proposed criteria for LT2ESWTR monitoring data should be accepted for use in bin determination. Specifically, EPA requests comment on the sampling frequency requirement for previously collected data, and whether EPA should allow samples collected at lower or varying frequencies to be used as long as the data are representative of seasonal variation and include the required number of samples. If so, how should EPA determine whether such a data set is unbiased and representative of seasonal variation? How should data collected at varying frequency be averaged?

Monitoring for Systems That Recycle Filter Backwash

Plants that recycle filter backwash water may, in effect, increase the concentration of *Cryptosporidium* in the water that enters the filtration treatment train. Under the LT2ESWTR proposal, microbial sampling may be conducted on source water prior to the addition of filter backwash water. EPA requests comment on how the effect of recycling filter backwash should be considered in LT2ESWTR monitoring.

Bin Assignment for Systems That Fail To Complete Required Monitoring

Today's proposal classifies systems that fail to complete required monitoring in Bin 4, the highest treatment bin. EPA requests comment on alternative approaches for systems that fail to complete required monitoring, such as classifying the system in a bin based on data the system has collected, or classifying the system in a bin one level higher than the bin indicated by the data the system has collected. The shortcoming to these alternative approaches is that bin classification becomes more uncertain, and the likelihood of bin misclassification increases, as systems collect fewer than the required 24 *Cryptosporidium* samples. Consequently, the proposed approach is for systems to collect all required samples.

Note that under today's proposal, systems may provide 5.5 log of treatment for *Cryptosporidium* (*i.e.*, comply with Bin 4 requirements) as an alternative to monitoring. Where systems notify the State that they will provide treatment instead of monitoring, they will not incur monitoring violations.

Monitoring Requirements for New Plants and Sources

The proposed LT2ESWTR would establish calendar dates when the initial and second round of source water monitoring must be conducted to determine bin classification. EPA recognizes that new plants will begin operation, and that existing plants will access new sources, after these dates. EPA believes that new plants and plants switching sources should conduct monitoring equivalent to that required of existing plants to determine the required level of *Cryptosporidium* treatment. The monitoring could be conducted before a new plant or source is brought on-line, or initiated within some time period afterward. EPA requests comment on monitoring and treatment requirements for new plants and sources.

Determination of LT2ESWTR Bin Classification

In today's proposal, EPA expects that systems will be assigned to LT2ESWTR risk bins based on their reported *Cryptosporidium* monitoring results and the calculations proposed for bin

assignment described in this section. EPA requests comment on whether bin classifications should formally be made or reviewed by States.

Source Water Type Classification for Systems That Use Multiple Sources

In today's proposal, the *E. coli* concentrations that trigger small system *Cryptosporidium* monitoring are different for systems using lake/reservoir and flowing stream sources. However, EPA recognizes that some systems use multiple sources, potentially including both lake/reservoir and flowing stream sources, and that the use of different sources may vary during the year. Further, some systems use sources that are ground water under the direct influence (GWUDI) of surface water. EPA requests comment on how to apply the *E. coli* criteria for triggering *Cryptosporidium* monitoring to systems using multiple sources and GWUDI sources.

B. Unfiltered System Treatment Technique Requirements for Cryptosporidium

1. What Is EPA Proposing Today?

a. *Overview.* EPA is proposing treatment technique requirements for *Cryptosporidium* in unfiltered systems. Today's proposal requires all unfiltered systems using surface water or ground water under the direct influence of surface water to achieve at least 2 log (99%) inactivation of *Cryptosporidium* prior to the distribution of finished water. Further, unfiltered systems must monitor for *Cryptosporidium* in their source water, and where monitoring demonstrates a mean level above 0.01 oocysts/L, systems must provide at least 3 log *Cryptosporidium* inactivation. Disinfectants that can be used to meet this treatment requirement include ozone, ultraviolet (UV) light, and chlorine dioxide.

All current requirements for unfiltered systems under 40 CFR 141.71 and 141.72(a) remain in effect, including requirements to inactivate at least 3 log of *Giardia lamblia* and 4 log of viruses. In addition, unfiltered systems must meet their overall disinfection requirements using a minimum of two disinfectants. These proposed requirements reflect recommendations of the Stage 2 M–DBP Federal Advisory Committee. Details of the proposed requirements are described in the following sections.

b. *Monitoring requirements.* Requirements for *Cryptosporidium* monitoring by unfiltered systems are similar to requirements for filtered systems of the same size, as given in section IV.A.1. Unfiltered systems serving at least 10,000 people must sample their source water for *Cryptosporidium* at least monthly for two years, beginning no later than 6 months after promulgation of this rule. Samples may be collected more frequently (*e.g.,* semi-monthly, weekly) as long as a consistent frequency is maintained throughout the monitoring period.

Unfiltered systems serving fewer than 10,000 people must conduct source water sampling for *Cryptosporidium* at least twice-per-month for one year, beginning no later than 4 years following promulgation of this rule (*i.e.,* on the same schedule as small filtered systems). However, unlike small filtered systems, small unfiltered systems cannot monitor for an indicator (*e.g., E. coli*) to determine if they are required to monitor for *Cryptosporidium*. EPA has not identified indicator criteria that can effectively screen for plants with *Cryptosporidium* concentrations below 0.01 oocysts/L. Consequently, all small unfiltered systems must conduct *Cryptosporidium* monitoring.

As described in section IV.K and IV.L, *Cryptosporidium* analyses must be performed on at least 10 L per sample with EPA Methods 1622 or 1623, and must be conducted by laboratories approved for these methods by EPA. Analysis of larger sample volumes is allowed, provided the laboratory has demonstrated comparable method performance to that achieved on a 10 L sample. Section IV.J describes requirements for reporting sample analysis results. All *Cryptosporidium* samples must be collected in accordance with a schedule that is developed by the system and submitted to EPA or the State at least 3 months prior to initiation of sampling. Refer to section IV.A.1 for requirements pertaining to any failure to report a valid sample analysis result for a scheduled sampling date and procedures for collecting a replacement sample.

Unfiltered systems are required to participate in future *Cryptosporidium* monitoring on the same schedule as filtered systems of the same size. Future monitoring requirements for filtered systems are described in section IV.A.1.

Unfiltered systems are not required to conduct source water *Cryptosporidium* monitoring under the LT2ESWTR if the system currently provides or will provide a total of at least 3 log *Cryptosporidium* inactivation, equivalent to meeting the treatment requirements for unfiltered systems with a mean *Cryptosporidium* concentration of greater than 0.01 oocysts/L. Systems must notify the State not later than the date the system is otherwise required to submit a sampling schedule for monitoring. Systems must install and operate technologies to provide a total of at least 3 log *Cryptosporidium* inactivation by the applicable date in Table IV–24.

c. *Treatment requirements.* All unfiltered systems must provide treatment for *Cryptosporidium*, and the degree of required treatment depends on the level of *Cryptosporidium* in the source water as determined through monitoring. Unfiltered systems must calculate their average source water *Cryptosporidium* concentration using the arithmetic mean of all samples collected during the required two year monitoring period (or one year monitoring period for small systems). For unfiltered systems with mean source water *Cryptosporidium* levels of less than or equal to 0.01 oocysts/L, 2 log *Cryptosporidium* inactivation is required. Where the mean source water level is greater than 0.01 oocysts/L, 3 log inactivation is required.

In addition, unfiltered systems are required to use at least two different disinfectants to meet their overall inactivation requirements for viruses (4 log), *Giardia lamblia* (3 log), and *Cryptosporidium* (2 or 3 log). Further, each of the two disinfectants must achieve by itself the total inactivation required for one of these three pathogen types. For example, a system could use UV light to achieve 2 log inactivation of *Cryptosporidium* and *Giardia lamblia*, and use chlorine to inactivate 1 log *Giardia lamblia* and 4 log viruses. In this case, chlorine would achieve the total inactivation required for viruses while UV light would achieve the total inactivation required for *Cryptosporidium*, and the two disinfectants together would meet the overall treatment requirements for viruses, *Giardia lamblia*, and *Cryptosporidium*. In all cases unfiltered systems must continue to meet disinfectant residual requirements for the distribution system.

EPA has developed criteria, described in sections IV.C.14–15, for systems to determine *Cryptosporidium* inactivation credits for chlorine dioxide, ozone, and UV light. Unfiltered systems are allowed to use any of these disinfectants to meet the 2 (or 3) log *Cryptosporidium* inactivation requirement. The following paragraphs describe standards for demonstrating compliance with the proposed *Cryptosporidium* treatment technique requirement. For systems using ozone and chlorine dioxide, these standards are similar to current standards for compliance with *Giardia*

lamblia and virus treatment requirements, as established by the SWTR in 40 CFR 141.72 and 141.74. However, for systems using UV light, modified compliance standards are proposed, due to the different way in which UV disinfection systems will be monitored.

Each day a system using ozone or chlorine dioxide serves water to the public, the system must calculate the CT value(s) from the system's treatment parameters, using the procedures specified in 40 CFR 141.74(b)(3). The system must determine whether this value(s) is sufficient to achieve the required inactivation of *Cryptosporidium* based on the CT criteria specified in section IV.C.14. The disinfection treatment must ensure at least 99 percent (or 99.9 percent if required) inactivation of *Cryptosporidium* every day the system serves water to the public, except any one day each month. Systems are required to report daily CT values on a monthly basis, as described in section IV.J.

Each day a system using UV light serves water to the public, the system must monitor for the parameters, including flow rate and UV intensity, that demonstrate whether the system's UV reactors are operating within the range of conditions that have been validated to achieve the required UV dose, as specified in section IV.C.15. Systems must monitor each UV reactor while in use and must record periods when any reactor operates outside of validated conditions. The disinfection treatment must ensure at least 99 percent (or 99.9 percent if required) inactivation of *Cryptosporidium* in at least 95 percent of the water delivered to the public every month. Systems are required to report periods when UV reactors operate outside of validated conditions on a monthly basis, as described in section IV.J.

Unfiltered systems currently must comply with requirements for DBPs as a condition of avoiding filtration under 40 CFR 141.71(b)(6). As described earlier, EPA is developing a Stage 2 DBPR, which will further limit allowable levels of certain DBPs, specifically trihalomethanes and haloacetic acids. EPA intends to incorporate new standards for DBPs established under the Stage 2 DBPR into the criteria for filtration avoidance.

2. How Was This Proposal Developed?

a. *Basis for Cryptosporidium treatment requirements.* The intent of the proposed treatment requirements for unfiltered systems is to achieve public health protection against *Cryptosporidium* equivalent to filtration systems. As described in section III.C, an assessment of survey data indicates that under current treatment requirements, finished water *Cryptosporidium* levels are higher in unfiltered systems than in filtered systems.

Information Collection Rule data show an average plant-mean *Cryptosporidium* level of 0.59 oocysts/L in the source water of filtered plants and 0.014 oocysts/L in unfiltered systems. Median plant-mean concentrations were 0.052 and 0.0079 oocysts/L in filtered and unfiltered system sources, respectively. Thus, these results suggest that typical *Cryptosporidium* occurrence in filtered system sources is approximately 10 times higher than in unfiltered system sources.

In translating these data to assess finished water risk, EPA and the Advisory Committee estimated that conventional plants in compliance with the IESWTR achieve an average *Cryptosporidium* removal of 3 log (see discussion in section III.D). Hence, if the median source water *Cryptosporidium* level at conventional plants is approximately 10 times higher than at unfiltered systems, and it is estimated that conventional plants achieve an average reduction of 3 log (99.9%), then the median finished water *Cryptosporidium* concentration at conventional plants is lower by a factor of 100 than at unfiltered systems. Therefore, to ensure equivalent public health protection, unfiltered systems should reduce *Cryptosporidium* levels by 2 log.

Due to the development of criteria for *Cryptosporidium* inactivation with ozone, chlorine dioxide, and UV light, EPA has determined that it is feasible for unfiltered systems to comply with a *Cryptosporidium* treatment technique requirement. Consequently, EPA is proposing that all unfiltered systems provide at least 2 log inactivation of *Cryptosporidium*.

The proposed treatment requirements for unfiltered systems with higher source water *Cryptosporidium* levels are consistent with proposed treatment requirements for filtered systems. As discussed previously, EPA is proposing that filtered plants with mean source water *Cryptosporidium* levels between 0.075 and 1.0 oocysts/L, as measured by Methods 1622 and 1623, provide at least a 4 log reduction (with greater treatment required for higher source water pathogen levels). These requirements will achieve average treated water *Cryptosporidium* concentrations below 1 oocyst/10,000 L in filtered systems. An unfiltered system with a mean source water *Cryptosporidium* concentration above 0.01 oocyst/L would need to provide more than 2 log inactivation in order to achieve an equivalent finished water oocyst level. Therefore, EPA is proposing that unfiltered systems provide at least 3 log inactivation where mean concentrations exceed 0.01 oocysts/L.

For unfiltered systems using UV disinfection to meet these proposed *Cryptosporidium* treatment requirements, EPA is proposing that compliance be based on a 95th percentile standard (*i.e.,* at least 95 percent of the water must be treated to the required UV dose). This standard is intended to be comparable with the ''every day except any one day per month'' compliance standard established by the SWTR for chemical disinfection (see 40 CFR 141.72(a)(1)). Because UV disinfection systems will typically consist of multiple parallel reactors that will be monitored continuously, the Agency has determined that it is more appropriate to base a compliance determination on the percentage of water disinfected to the required level, rather than a single daily measurement. The UV Disinfection Guidance Manual (USEPA 2003d) will provide advice on meeting this proposed standard. A draft of this guidance is available in the docket for today's proposal (*http://www.epa.gov/edocket/*).

b. *Basis for requiring the use of two disinfectants.* EPA is proposing that unfiltered systems use at least two different disinfectants to meet the 2 (or 3), 3, and 4 log inactivation requirements for *Cryptosporidium*, *Giardia lamblia*, and viruses, respectively. The purpose of this requirement is to provide for multiple barriers of protection against pathogens. One benefit of this approach is that if one barrier were to fail then there would still be one remaining barrier to provide protection against some of the pathogens that might be present. For example, if a plant used UV to inactivate *Cryptosporidium* and *Giardia lamblia*, along with chlorine to inactivate viruses, and the UV system were to malfunction, the chlorine would still meet the treatment requirement for viruses and would provide some degree of protection against *Giardia lamblia*.

Another benefit of multiple barriers is that they will typically provide more effective protection against a broad spectrum of pathogens than a single disinfectant. Because the efficacy of disinfectants against different pathogens varies widely, using multiple disinfectants will generally provide more efficient inactivation of a wide

range of pathogens than a single disinfectant.

EPA is aware, though, that this requirement would not result in a redundant barrier for each type of pathogen. In the example of a plant using chlorine and UV, the chlorine would provide essentially no protection against *Cryptosporidium* and might achieve only a small amount of *Giardia lamblia* inactivation if it was designed primarily to inactivate viruses. However, since the watersheds of unfiltered systems are required to be protected (40 CFR 141.71), the probability is low that high levels of *Cryptosporidium* or *Giardia lamblia* would occur during the time frame necessary to address a short period of treatment failure.

Note the request for comment on this topic at the end of this section.

c. *Basis for source water monitoring requirements.* Monitoring by unfiltered systems is necessary to identify those with mean source water *Cryptosporidium* levels above 0.01 oocysts/L. In order to allow for simultaneous compliance with other microbial and disinfection byproduct regulatory requirements, EPA is proposing that unfiltered systems monitor for *Cryptosporidium* on the same schedule as filtered systems of the same size. Because EPA was not able to identify indicator criteria, such as *E. coli*, that can discriminate among systems above and below a mean *Cryptosporidium* concentration of 0.01 oocysts/L, EPA is proposing that all unfiltered systems monitor for *Cryptosporidium*.

Consistent with requirements for filtered systems, unfiltered systems are required to analyze at least 24 samples of at least 10 L over the two year monitoring period (one year for small systems). However, if an unfiltered system collected and analyzed only 24 samples of 10 L then a total count of 3 oocysts among all samples would result in a source water concentration exceeding 0.01 oocysts/L. To avoid a relatively small number of counts determining an additional treatment implication, unfiltered systems may consider conducting more frequent sampling or analyzing larger sample volumes (*e.g.,* 50 L). Since the water sources of unfiltered systems tend to have very low turbidity (compared to average sources in filtered systems), it is typically more feasible to analyze larger sample volumes in unfiltered systems. Filters have been approved for *Cryptosporidium* analysis of 50 L samples. Note that analysis of larger sample volumes would not reduce the required sampling frequency.

3. Request for Comment

EPA solicits comment on the proposed monitoring and treatment technique requirements for unfiltered systems. Specifically, the Agency seeks comment on the following issues:

Use of Two Disinfectants

EPA requests comment on the proposed requirement for unfiltered systems to use two disinfectants and for each disinfectant to meet by itself the inactivation requirement for at least one regulated pathogen. The requirement for unfiltered systems to use two disinfectants was recommended by the Advisory Committee because (1) disinfectants vary in their efficacy against different pathogens, so that the use of multiple disinfectants can provide more effective protection against a broad spectrum of pathogens, and (2) multiple disinfectants provide multiple barriers of protection, which can be more reliable than a single disinfectant.

An alternate approach would be to allow systems to meet the inactivation requirements using any combination of one or more disinfectants that achieved the required inactivation level for all pathogens. This would give systems greater flexibility and could spur the development of new disinfection techniques that would be applicable to a wide range of pathogens. However, this approach might be less protective against unregulated pathogens. A related question is whether the proposed requirements for use of two disinfectants establish an adequate level of multiple barriers in the treatment provided by unfiltered systems.

Treatment Requirements for Unfiltered Systems With Higher *Cryptosporidium* Levels

Under the proposed LT2ESWTR, a filtered system that measures a mean source water *Cryptosporidium* level of 0.075 oocysts/L or higher is required to provide a total of 4 log or more reduction of *Cryptosporidium*. However, if an unfiltered system, meeting the criteria for avoiding filtration were to measure *Cryptosporidium* at this level, it would be required to provide only 3 log treatment. Available occurrence data indicate that very few, if any, unfiltered systems will measure mean source water *Cryptosporidium* concentrations above 0.075 oocysts/L. However, EPA requests comment on whether or how this possibility should be addressed.

C. Options for Systems To Meet Cryptosporidium Treatment Requirements

1. Microbial Toolbox Overview

The LT2ESWTR proposal contains a list of treatment processes and management practices for water systems to use in meeting additional *Cryptosporidium* treatment requirements under the LT2ESWTR. This list, termed the microbial toolbox, was recommended by the Stage 2 M–DBP Advisory Committee in the Agreement in Principle. Components of the microbial toolbox include watershed control programs, alternative sources, pretreatment processes, additional filtration barriers, inactivation technologies, and enhanced plant performance. The intent of the microbial toolbox is to provide water systems with broad flexibility in selecting cost-effective LT2ESWTR compliance strategies. Moreover, the toolbox allows systems that currently provide additional pathogen barriers or that can demonstrate enhanced performance to receive additional *Cryptosporidium* treatment credit.

A key feature of the microbial toolbox is that many of the components carry presumptive credits towards *Cryptosporidium* treatment requirements. Plants will receive these credits for toolbox components by demonstrating compliance with required design and implementation criteria, as described in the sections that follow. Treatment credit greater than the presumptive credit may be awarded for a toolbox component based on a site-specific or technology-specific demonstration of performance, as described in section IV.C.17.

While the Advisory Committee made recommendations for the degree of presumptive treatment credit to be granted to different toolbox components, the Committee did not specify the design and implementation conditions under which the credit should be awarded. EPA has identified and is proposing such conditions in today's notice, based on an assessment of available data. For certain toolbox components, such as raw water storage and roughing filters, the Agency concluded that available data do not support the credit recommended by the Advisory Committee. Consequently, EPA is not proposing a presumptive credit for these options.

For each microbial toolbox component, EPA is requesting comment on: (1) Whether available data support the proposed presumptive credits, including the design and implementation conditions under which

the credit would be awarded, (2) whether available data are consistent with the decision not to award presumptive credit for roughing filters and raw water off-stream storage, and (3) whether additional data are available on treatment effectiveness of toolbox components for reducing *Cryptosporidium* levels. EPA will consider modifying today's proposal for microbial toolbox components based on new information that may be provided.

EPA particularly solicits comment on the performance of alternative filtration technologies that are currently being used, as well as ones that systems are considering for use in the future, specifically including bag filters, cartridge filters, and bank filtration, in removing *Cryptosporidium*. The Agency requests both laboratory and field data that will support a determination of the appropriate level of *Cryptosporidium* removal credit to award to these technologies. In addition, the Agency requests information on the applicability of these technologies to different source water types and treatment scenarios. Data submitted in response to this request for comment should include, where available, associated quality assurance and cost information. This preamble discusses bank filtration in section IV.C.6 and bag and cartridge filters in section IV.C.12.

Table IV–7 summarizes presumptive credits and associated design and implementation criteria for microbial toolbox components. Each component is then described in more detail in the sections that follow. EPA is also developing guidance to assist systems with implementing toolbox components. Pertinent guidance documents include: UV Disinfection Guidance Manual (USEPA 2003d), Membrane Filtration Guidance Manual (USEPA 2003e), and Toolbox Guidance Manual (USEPA 2003f). Each is available in draft form in the docket for today's proposal *(http://www.epa.gov/edocket/).*

TABLE IV–7.—MICROBIAL TOOLBOX: PROPOSED OPTIONS, LOG CREDITS, AND DESIGN/IMPLEMENTATION CRITERIA [1]

Toolbox option	Proposed *Cryptosporidium* log credit with design and implementation criteria[1]
Watershed control program	0.5 log credit for State-approved program comprising EPA specified elements. Does not apply to unfiltered systems.
Alternative source/Intake management	No presumptive credit. Systems may conduct simultaneous monitoring for LT2ESWTR bin classification at alternative intake locations or under alternative intake management strategies.
Off-stream raw water storage	No presumptive credit. Systems using off-stream storage must conduct LT2ESWTR sampling after raw water reservoir to determine bin classification.
Pre-sedimentation basin with coagulation	0.5 log credit with continuous operation and coagulant addition; basins must achieve 0.5 log turbidity reduction based on the monthly mean of daily measurements in 11 of the 12 previous months; all flow must pass through basins. Systems using existing pre-sed basins must sample after basins to determine bin classification and are not eligible for presumptive credit.
Lime softening	0.5 log additional credit for two-stage softening (single-stage softening is credited as equivalent to conventional treatment). Coagulant must be present in both stages—includes metal salts, polymers, lime, or magnesium precipitation. Both stages must treat 100% of flow.
Bank filtration (as pretreatment)	0.5 log credit for 25 ft. setback; 1.0 log credit for 50 ft. setback; aquifer must be unconsolidated sand containing at least 10% fines; average turbidity in wells must be < 1 NTU. Systems using existing wells followed by filtration must monitor well effluent to determine bin classification and are not eligible for presumptive credit.
Combined filter performance	0.5 log credit for combined filter effluent turbidity ≤ 0.15 NTU in 95% of samples each month.
Roughing filters	No presumptive credit proposed.
Slow sand filters	2.5 log credit as a secondary filtration step; 3.0 log credit as a primary filtration process. No prior chlorination.
Second stage filtration	0.5 log credit for second separate filtration stage; treatment train must include coagulation prior to first filter. No presumptive credit for roughing filters.
Membranes	Log credit equivalent to removal efficiency demonstrated in challenge test for device if supported by direct integrity testing.
Bag filters	1 log credit with demonstration of at least 2 log removal efficiency in challenge test.
Cartridge filters	2 log credit with demonstration of at least 3 log removal efficiency in challenge test.
Chlorine dioxide	Log credit based on demonstration of log inactivation using CT table.
Ozone	Log credit based on demonstration of log inactivation using CT table.
UV	Log credit based on demonstration of inactivation with UV dose table; reactor testing required to establish validated operating conditions.
Individual filter performance	1.0 log credit for demonstration of filtered water turbidity < 0.1 NTU in 95 percent of daily max values from individual filters (excluding 15 min period following backwashes) and no individual filter > 0.3 NTU in two consecutive measurements taken 15 minutes apart.
Demonstration of performance	Credit awarded to unit process or treatment train based on demonstration to the State, through use of a State-approved protocol.

[1] Table provides summary information only; refer to following preamble and regulatory language for detailed requirements.

2. Watershed Control Program

a. *What is EPA proposing today?* EPA is proposing a 0.5 log credit towards *Cryptosporidium* treatment requirements under the LT2ESWTR for filtered systems that develop a State-approved watershed control program designed to reduce the level of *Cryptosporidium*. The watershed control program credit can be added to the credit awarded for any other toolbox component. However, this credit is not available to unfiltered systems, as they are currently required under 40 CFR 141.171 to maintain a watershed control

program that minimizes the potential for contamination by *Cryptosporidium* as a criterion for avoiding filtration.

There are many potential sources of *Cryptosporidium* in watersheds, including sewage discharges and non-point sources associated with animal feces. The feasibility, effectiveness, and sustainability of control measures to reduce *Cryptosporidium* contamination of water sources will be site-specific. Consequently, the proposed watershed control program credit centers on systems working with stakeholders in the watershed to develop a site-specific program, and State review and approval are required. In the Toolbox Guidance Manual (USEPA 2003f), available in draft in the docket for today's proposal, EPA provides information on management practices that systems may consider in developing their watershed control programs.

Initial State approval of a system's watershed control program will be based on State review of the system's proposed watershed control plan and supporting documentation. The initial approval can be valid until the system completes the second round of *Cryptosporidium* monitoring described in section IV.A (systems begin a second round of monitoring six years after the initial bin assignment). During this period, the system is responsible for implementing the approved plan and complying with other general requirements, such as an annual watershed survey and program status report. These requirements are further described later in this section.

The period during which State approval of a watershed control program is in effect is referred to as the approval period. Systems that want to continue their eligibility to receive the 0.5 log *Cryptosporidium* treatment credit must reapply for State approval of the program for each subsequent approval period. In general, the re-approval will be based on the State's review of the system's reapplication package, as well as the annual status reports and watershed surveys. Subsequent approval(s) by the State of the watershed control program typically will be for a time equivalent to the first approval period, but States have the discretion to renew approval for a longer or shorter time period.

Requirements for Initial State Approval of Watershed Control Programs

Systems that intend to pursue a 0.5 log *Cryptosporidium* treatment credit for a watershed control program are required to notify the State within one year following initial bin assignment that the system proposes to develop a watershed control plan and submit it for State approval.

The application to the State for initial program approval must include the following minimum elements:

- An analysis of the vulnerability of each source to *Cryptosporidium*. The vulnerability analysis must address the watershed upstream of the drinking water intake, including: A characterization of the watershed hydrology, identification of an ''area of influence'' (the area to be considered in future watershed surveys) outside of which there is no significant probability of *Cryptosporidium* or fecal contamination affecting the drinking water intake, identification of both potential and actual sources of *Cryptosporidium* contamination, the relative impact of the sources of *Cryptosporidium* contamination on the system's source water quality, and an estimate of the seasonal variability of such contamination.
- An analysis of control measures that could address the sources of *Cryptosporidium* contamination identified during the vulnerability analysis. The analysis of control measures must address their relative effectiveness in reducing *Cryptosporidium* loading to the source water and their sustainability.
- A plan that specifies goals and defines and prioritizes specific actions to reduce source water *Cryptosporidium* levels. The plan must explain how actions are expected to contribute to specified goals, identify partners and their role(s), present resource requirements and commitments including personnel, and include a schedule for plan implementation.

The proposed watershed control plan and a request for program approval and 0.5 log *Cryptosporidium* treatment credit must be submitted by the system to the State no later than 24 months following initial bin assignment.

The State will review the system's initial proposed watershed control plan and either approve, reject, or ''conditionally approve'' the plan. If the plan is approved, or if the system agrees to implementing the State's conditions for approval, the system will be awarded 0.5 log credit towards LT2ESWTR *Cryptosporidium* treatment requirements. A final decision on approval must be made no later than three years following the system's initial bin assignment.

The initial State approval of the system's watershed control program can be valid until the system completes the required second round of *Cryptosporidium* monitoring. The system is responsible for taking the required steps, described as follows, to maintain State program approval and the 0.5 log credit during the approval period.

Requirements for Maintaining State Approval of Watershed Control Programs

Systems that have obtained State approval of their watershed control program are required to meet the following ongoing requirements within each approval period to continue their eligibility for the 0.5 log *Cryptosporidium* treatment credit:

- Submit an annual watershed control program status report to the State during each year of the approval period.
- Conduct an annual State-approved watershed survey and submit the survey report to the State.
- Submit to the State an application for review and re-approval of the watershed control program and for a continuation of the 0.5 log treatment credit for a subsequent approval period.

The annual watershed control program status report must describe the system's implementation of the approved plan and assess the adequacy of the plan to meet its goals. It must explain how the system is addressing any shortcomings in plan implementation, including those previously identified by the State or as the result of the watershed survey. If it becomes necessary during implementation to make substantial changes in its approved watershed control program, the system must notify the State and provide a rationale prior to making any such changes . If any change is likely to reduce the level of source water protection, the system must also include the actions it will take to mitigate the effects in its notification.

The watershed survey must be conducted according to State guidelines and by persons approved by the State to conduct watershed surveys. The survey must encompass the area of the watershed that was identified in the State-approved watershed control plan as the area of influence and, as a minimum, assess the priority activities identified in the plan and identify any significant new sources of *Cryptosporidium*.

The application to the State for review and re-approval of the system's watershed control program must be provided to the State at least six months before the current approval period expires or by a date previously determined by the State. The request must include a summary of activities and issues identified during the previous approval period and a revised

plan that addresses activities for the next approval period, including any new actual or potential sources of *Cryptosporidium* contamination and details of any proposed or expected changes from the existing State-approved program. The plan must address goals, prioritize specific actions to reduce source water *Cryptosporidium*, explain how actions are expected to contribute to achieving goals, identify partners and their role(s), resource requirements and commitments, and the schedule for plan implementation.

The annual program status reports, watershed control plan and annual watershed sanitary surveys must be made available to the public upon request. These documents must be in a plain language format and include criteria by which to evaluate the success of the program in achieving plan goals. If approved by the State, the system may withhold portions of the annual status report, watershed control plan, and watershed sanitary survey based on security considerations.

b. *How was this proposal developed?* The M–DBP Advisory Committee recommended that systems be awarded 0.5 log *Cryptosporidium* treatment credit for implementing a watershed control program. This recommendation was based on the Committee's recognition that some systems will be able to reduce the level of *Cryptosporidium* in their source water by implementing a well-designed and focused watershed control program. Moreover, the control measures used in the watershed to reduce levels of *Cryptosporidium* are likely to reduce concentrations of other pathogens as well.

EPA concurs that well designed watershed control programs that focus on reducing levels of *Cryptosporidium* contamination of water sources should be encouraged, and that implementation of such programs will likely reduce overall microbial risk. A broad reduction in microbial risk will occur through the application of control measures and best management practices that are effective in reducing fecal contamination in the watershed. In addition, plant management practices may be enhanced by the knowledge systems acquire regarding the watershed and factors that affect microbial risk, such as sources, fate, and transport of pathogens.

Given the highly site-specific nature of a watershed control program, including the feasibility and effectiveness of different control measures, EPA believes that systems should demonstrate their eligibility for 0.5 log *Cryptosporidium* treatment credit by developing targeted programs that account for site-specific factors. As part of developing a watershed control program, systems will be required to assess a number of these factors, including watershed hydrology, sources of *Cryptosporidium* in the watershed, human impacts, and fate and transport of *Cryptosporidium*. Furthermore, EPA believes that the State is well positioned to judge whether a system's watershed control program is likely to achieve a substantial reduction of *Cryptosporidium* in source water. Consequently, EPA is proposing that approval of watershed control programs and allowance for an associated 0.5 log treatment credit be made by the State on a system specific basis.

A watershed control program could include measures such as (1) the elimination, reduction, or treatment of wastewater or storm water discharges, (2) treatment of *Cryptosporidium* contamination at the sites of waste generation or storage, (3) prevention of *Cryptosporidium* migration from sources, or (4) any other measures that are effective, sustainable, and likely to reduce *Cryptosporidium* contamination of source water. EPA recognizes that many public water systems do not directly control the watersheds of their sources of supply. EPA expects that systems will need to develop and maintain partnerships with landowners within watersheds, as well as with State governments and regional agencies that have authority over activities in the watershed that may contribute *Cryptosporidium* to the water supply. Stakeholders that have some level of control over activities that could contribute to *Cryptosporidium* contamination include municipal government and private operators of wastewater treatment plants, livestock farmers and persons who spread manure, individuals with failing septic systems, logging operations, and other government and commercial organizations.

EPA has initiated a number of programs that address watershed management and source water protection. In 2002, EPA launched the Watershed Initiative (67 FR 36172, May 23, 2002) (USEPA 2002b), which will provide grants to support innovative watershed based approaches to preventing, reducing, and eliminating water pollution. In addition, EPA has recently promulgated new regulations for Concentrated Animal Feeding Operations (CAFOs), which through the NPDES permit process will limit discharges that contribute microbial pathogens to watersheds.

SDWA section 1453 requires States to carry out a source water quality assessment program for the protection and benefit of public water systems. EPA issued program guidance in August of 1997, and expects that most States will complete their source water assessments of surface water systems by the end of 2003. These assessments will establish a foundation for watershed vulnerability analyses by providing the preliminary analyses of watershed hydrology, a starting point for defining the area of influence, and an inventory and hierarchy of actual and potential contamination sources. In some cases, these portions of the source water assessment may fully satisfy those analytical needs.

As noted earlier, EPA has published and is continuing to develop guidance material that addresses contamination by *Cryptosporidium* and other pathogens from both non-point sources (*e.g.*, agricultural and urban runoff, septic tanks) and point sources (*e.g.*, sewer overflows, POTWs, CAFOs). The Toolbox Guidance Manual, available in draft with today's proposal, includes a list of programmatic resources and guidance available to assist systems in building partnerships and implementing watershed protection activities. In addition, this guidance manual incorporates available information on the effectiveness of different control measures to reduce *Cryptosporidium* levels and provides case studies of watershed control programs. This guidance is intended to assist water systems in developing their watershed control programs and States in their assessment and approval of these programs.

In addition to guidance documents, demonstration projects, and technical resources, EPA provides funding for watershed and source water protection through the Drinking Water State Revolving Fund (DWSRF) and Clean Water State Revolving Fund (CWSRF). Under the DWSRF program, States may provide funding directly to public water systems for source water protection, including watershed management and pathogen source reduction plans. CWSRF funds have been used to develop and implement agricultural best management practices for reducing pathogen loading to receiving waters and to fund directly, or provide incentives for, the replacement of failing septic systems. EPA encourages the use of CWSRF for source protection and has developed guidelines for the award of funds to address non-point sources of pollution (CWA section 319 Non Point Source Pollution Program). Further, the Agency is promoting the broader use of

SRF funds to implement measures to prevent and control non-point source pollution. Detailed sanitary surveys, with a specific analysis of sources of *Cryptosporidium* in the watershed, will facilitate the process of targeting funding available under SRF programs to eliminate or mitigate these sources.

c. *Request for comment.* EPA requests comment on the proposed watershed control program credit and associated program components.

• Should the State be allowed to reduce the frequency of the annual watershed survey requirement for certain systems if systems engage in alternative activities like public outreach?

• The effectiveness of a watershed control program may be difficult to assess because of uncertainty in the efficacy of control measures under site-specific conditions. In order to provide constructive guidance, EPA welcomes reports on scientific case studies and research that evaluated methods for reducing *Cryptosporidium* contamination of source waters.

• Are there confidential business information (CBI) concerns associated with making information on the watershed control program available to the public? If so, what are these concerns and how should they be addressed?

• How should the ''area of influence'' (the area to be considered in future watershed surveys) be delineated, considering the persistence of *Cryptosporidium*?

3. Alternative Source

a. *What is EPA proposing today?* Plant intake refers to the works or structures at the head of a conduit through which water is diverted from a source (*e.g.*, river or lake) into the treatment plant. Plants may be able to reduce influent *Cryptosporidium* levels by changing the intake placement (either within the same source or to an alternate source) or managing the timing or level of withdrawal.

Because the effect of changing the location or operation of a plant intake on influent *Cryptosporidium* levels will be site specific, EPA is not proposing any presumptive credit for this option. Rather, if a system is concerned that *Cryptosporidium* levels associated with the current plant intake location and/or operation will result in a bin assignment requiring additional treatment under the LT2ESWTR, the system may conduct concurrent *Cryptosporidium* monitoring reflecting a different intake location or different intake management strategy. The State will then make a determination as to whether the plant may be classified in an LT2ESWTR bin using the alternative intake location or management monitoring results.

Thus, systems that intend to be classified in an LT2ESWTR bin based on a different intake location or management strategy must conduct concurrent *Cryptosporidium* monitoring. The system is still required to monitor its current plant intake in addition to any alternative intake location/management monitoring, and must submit the results of all monitoring to the State. In addition, the system must provide the State with supporting information documenting the conditions under which the alternative intake location/management samples were collected. The concurrent monitoring must conform to the sample frequency, sample volume, analytical method, and other requirements that apply to the system for *Cryptosporidium* monitoring as stated in Section IV.A.1.

If a plant's LT2ESWTR bin classification is based on monitoring results reflecting a different intake location or management strategy, the system must relocate the intake or implement the intake management strategy within the compliance time frame for the LT2ESWTR, as specified in section IV.F.

b. *How was this proposal developed?* In the Stage 2 M–DBP Agreement in Principle, the Advisory Committee identified several actions related to the intake which potentially could reduce the concentration of *Cryptosporidium* entering a treatment plant. These actions were included in the microbial toolbox under the heading Alternative Source, and include: (1) Intake relocation, (2) change to alternative source of supply, (3) management of intake to reduce capture of oocysts in source water, (4) managing timing of withdrawal, and (5) managing level of withdrawal in water column.

It is difficult to predict in advance the efficacy of any of these activities in reducing levels of *Cryptosporidium* entering the treatment plant. However, if a system relocates the plant intake or implements a different intake management strategy, it is appropriate for the plant to be assigned to an LT2ESWTR bin using monitoring results reflecting the new intake strategy.

EPA believes that the requirements specified for monitoring to determine bin placement are necessary to characterize a plant's mean source water *Cryptosporidium* level. Consequently, any concurrent monitoring carried out to characterize a different intake location or management strategy should be equivalent. For this reason, the sampling and analysis requirements which apply to the current intake monitoring also apply to any concurrent monitoring used to characterize a new intake location or management strategy.

EPA also recognizes that if plant's bin assignment is based on a new intake operation strategy then it is important for the plant to continue to use this new strategy in routine operation. Therefore, EPA is proposing that the system document the new intake operation strategy when submitting additional monitoring results to the State and that the State approve that new strategy.

c. *Request for comment.* EPA requests comment on the following issues:

• What are intake management strategies by which systems could reduce levels of *Cryptosporidium* in the plant influent?

• Can representative *Cryptosporidium* monitoring to demonstrate a reduction in oocyst levels be accomplished prior to implementation of a new intake strategy (*e.g.*, monitoring a new source prior to constructing a new intake structure)?

• How should this option be applied to plants that use multiple sources which enter a plant through a common conduit, or which use separate sources which enter the plant at different points?

4. Off-Stream Raw Water Storage

a. *What is EPA proposing today?* Off-stream raw water storage reservoirs are basins located between a water source (typically a river) and the coagulation and filtration processes in a treatment plant. EPA is not proposing presumptive treatment credit for *Cryptosporidium* removal through off-stream raw water storage. Systems using off-stream raw water storage must conduct *Cryptosporidium* monitoring after the reservoir for the purpose of determining LT2ESWTR bin placement. This will allow reductions in *Cryptosporidium* levels that occur through settling during off-stream storage to be reflected in the monitoring results and consequent LT2ESWTR bin assignment.

The use of off-stream raw water storage reservoirs during LT2ESWTR monitoring must be consistent with routine plant operation and must be recorded by the system. Guidance on monitoring locations is provided in Public Water System Guidance Manual for Source Water Monitoring under the LT2ESWTR (USEPA 2003g), which is available in draft in the docket for today's proposal.

b. *How was this proposal developed?* The Stage 2 M–DBP Agreement in Principle recommends a 0.5 log credit for off-stream raw water storage

reservoirs with detention times on the order of days and 1.0 log credit for reservoirs with detention times on the order of weeks. After a review of the available literature, EPA is unable to determine criteria that provide reasonable assurance of achieving a 0.5 or 1 log removal of oocysts. Consequently, EPA is not proposing a presumptive treatment credit for this process.

This proposal for off-stream raw water storage represents a change from the November 2001 pre-proposal draft of the LT2ESWTR (USEPA 2001g), which described 0.5 log and 1 log presumptive credits for reservoirs with hydraulic detention times of 21 and 60 days, respectively. These criteria were based on a preliminary assessment of reported studies, described later in this section, that evaluated *Cryptosporidium* and Giardia removal in raw water storage reservoirs.

Subsequent to the November 2001 pre-proposal draft, the Science Advisory Board (SAB) reviewed the data that EPA had acquired to support *Cryptosporidium* treatment credits for off-stream raw water storage (see section VII.K). In written comments from a December 2001 meeting of the SAB Drinking Water Committee, the panel concluded that the available data were not adequate to demonstrate the treatment credits for off-stream raw water storage described in the pre-proposal draft, and recommended that no presumptive credits be given for this toolbox option. The panel did agree, though, that a utility should be able to take advantage of off-stream raw water storage by sampling after the reservoir for appropriate bin placement. EPA concurs with this finding by the SAB and today's proposal is consistent with their recommendation.

Off-stream raw water storage can improve the microbial quality of water in a number of ways. These include (1) reduced microbial and particulate loading to the plant due to settling in the reservoir, (2) reduced viability of pathogens due to die-off, and (3) dampening of water quality and hydraulic spikes. EPA has evaluated a number of studies that investigated the removal of *Cryptosporidium* and other microorganisms and particles in raw water storage basins. These studies are summarized in the following paragraphs, and selected results are presented in Table IV–8.

TABLE IV–8.—STUDIES OF *Cryptosporidium* AND GIARDIA REMOVAL FROM OFF-STREAM RAW WATER STORAGE

Researcher	Reservoir	Residence time	Log reductions
Ketelaars et al. 1995	Biesbosch reservoir system: man-made pumped storage (Netherlands).	24 weeks (average)	*Cryptosporidium*-1.4 *Giardia*-2.3.
Van Breeman et al. 1998	Biesbosch reservoir system: man-made pumped storage (Netherlands).	24 weeks (average)	*Cryptosporidium*-2.0 *Giardia*-2.6.
	PWN (Netherlands)	10 weeks (average)	*Cryptosporidium*-1.3 *Giardia*-0.8.
Bertolucci et al. 1998	Abandoned gravel quarry used for storage (Italy).	18 days (theoretical)	*Cryptosporidium*-1.0 *Giardia*-0.8.
Ongerth, 1989	Three impoundments on rivers with limited public access (Seattle, WA).	40, 100 and 200 days (respectively).	No Giardia removal observed.

Ketelaars *et al.* (1995) evaluated *Cryptosporidium* and Giardia removal across a series of three man-made pumped reservoirs, named the Biesbosch reservoirs, with reported hydraulic retention times of 11, 9, and 4 weeks (combined retention time of 24 weeks). To prevent algal growth and hypolimnetic deoxygenation, the reservoirs were destratified by air-injection. Based on weekly sampling over one year, mean influent and effluent concentrations of *Cryptosporidium* were 0.10 and 0.004 oocysts/100 L, respectively, indicating an average removal across the three reservoirs of 1.4 log. Mean removal of Giardia was 2.3 log.

Van Breemen *et al.* (1998) continued the efforts of Ketelaars *et al.* (1995) in evaluating pathogen removal across the Biesbosch reservoir system. Using a more sensitive analytical method, Van Breeman *et al.* measured mean *Cryptosporidium* levels of 6.3 and 0.064 oocysts/100 L at the inlet and outlet, respectively, indicating an average removal of 2.0 log. For Giardia, the average reduction was 2.6 log. In addition, Van Breeman *et al.* (1998) evaluated removal of *Cryptosporidium*, Giardia, and other microorganisms in a reservoir designated PWN, which had a hydraulic retention time of 10 weeks. Passage through this storage reservoir was reported to reduce the mean concentration of *Cryptosporidium* by 1.3 log and of Giardia by 0.8 log.

Bertolucci *et al.* (1998) investigated removal of *Cryptosporidium*, Giardia, and nematodes in a reservoir derived from an abandoned gravel quarry with a detention time reported as around 18 days. Over a 2 year period, average influent and effluent concentrations of *Cryptosporidium* were 70 and 7 oocysts/100 L, respectively, demonstrating a mean reduction of 1 log. Average Giardia levels decreased from 137 cysts/100L in the inlet to 46 cysts/100L at the outlet, resulting in a mean 0.5 log removal.

Ongerth (1989) studied concentrations of Giardia cysts in the Tolt, Cedar, and Green rivers, which drain the western slope of the Cascade Mountains in Washington. The watersheds of each river are controlled by municipal water departments for public water supply, and public access is limited. The Cedar, Green, and Tolt rivers each have impoundments with reported residence times of 100, 30–50, and 200 days, respectively, in the reach studied. Ongerth found no statistically significant difference in cyst concentrations above and below any of the reservoirs. Median cyst concentrations above and below the Cedar, Green, and Tolt reservoirs were reported as 0.12 and 0.22, 0.27 and 0.32, and 0.16 and 0.21 cysts/L, respectively. It is unclear why no decrease in cyst levels was observed. It is possible that contamination of the water in the impoundments by Giardia from animal sources, either directly or through run-off, may have occurred.

EPA has also considered results from studies which evaluated the rate at which *Cryptosporidium* oocysts lose viability and infectivity over time. Two studies are summarized next, with selected results presented in Table IV–9.

TABLE IV–9.—STUDIES OF *Cryptosporidium* DIE-OFF DURING RAW WATER STORAGE

Researcher	Type of experiment	Log reduction
Medema *et al.* 1997	River water was inoculated with *Cryptosporidium* and bacteria and incubated.	0.5 log reduction over 50 days at 5 °C; 0.5 log reduction over 20–80 days at 15 °C.
Sattar *et al.* 1999	Synthetic hard water and natural water from several rivers inoculated with Giardia and *Cryptosporidium*.	*In vitro* conditions showed 0.7 to 2.0 log reduction over 30 days at 20 °C. Little reduction at 4 °C. *In situ* conditions showed 0.4 to 1.5 log reduction at 21 days.

Medema *et al.* (1997) conducted bench scale studies of the influence of temperature and the presence of biological activity on the die-off rate of *Cryptosporidium* oocysts. Die-off rates were determined at 5°C and 15°C, and in both natural and sterilized (autoclaved) river water. Both excystation and vital dye staining were used to determine oocyst viability. At 5°C, the die-off rate under all conditions was 0.010 $\log_{10}$/day, assuming first-order kinetics. This translates to 0.5 log reduction at 50 days. At 15°C, the die-off rate in natural river water approximately doubled to 0.024 $\log_{10}$/day (excystation) and 0.018 $\log_{10}$/day (dye staining). However, in autoclaved water at 15°C, the die-off rate was only 0.006 $\log_{10}$/day (excystation) and 0.011 $\log_{10}$/day (dye staining). These results suggest that oocyst die-off is more rapid at higher temperatures in natural water, and this behavior may be caused by increased biological or biochemical activity.

Sattar *et al.* (1999) evaluated factors impacting *Cryptosporidium* and Giardia survival. Microtubes containing untreated water from the Grand and St. Lawrence rivers (Ontario) were inoculated with purified oocysts and cysts. Samples were incubated at temperatures ranging from 4°C to 30°C, viability of oocysts and cysts was measured by excystation. At 20°C and 30°C, reductions in viable *Cryptosporidium* oocysts ranged from approximately 0.6 to 2.0 log after 30 days. However, relatively little inactivation took place when oocysts were incubated at 4°C (as low as 0.2 log at 100 days).

To evaluate oocyst survival under dynamic environmental conditions, Sattar *et al.* seeded dialysis cassettes with *Cryptosporidium* oocysts and placed them in overflow tanks receiving water from different rivers in Canada and the United States. Reductions in the concentration of viable oocysts ranged from approximately 0.4 to 1.5 log after 21 days. Survival of oocysts was enhanced by pre-filtering the water, suggesting that microbial antagonism was involved in the natural inactivation of the parasites.

Overall these studies indicate that off-stream storage of raw water has the potential to effect significant reductions in the concentration of viable *Cryptosporidium* oocysts, both through sedimentation and degradation of oocysts (*i.e.*, die-off). However, these data also illustrate the challenge in reliably estimating the amount of removal that will occur in any particular storage reservoir. Removal and die-off rates reported in these studies varied widely, and were observed to be influenced by factors like temperature, contamination, hydraulic short circuiting, and biological activity (Van Breeman *et al.* 1998, Medema *et al.* 1997, Sattar *et al.* 1999). Because of this variability and the relatively small amount of available data, it is difficult to extrapolate from these studies to develop nationally applicable criteria for awarding removal credits to raw water storage.

c. *Request for comment.* EPA requests comment on the finding that the available data are not adequate to support a presumptive *Cryptosporidium* treatment credit for off-stream raw water storage, and that systems using off-stream storage should conduct LT2ESWTR monitoring at the reservoir outlet. This monitoring approach would account for reductions in oocyst concentrations due to settling, but would not provide credit for die-off, since non-viable oocysts could still be counted during monitoring. In addition, EPA would also appreciate comment on the following specific issues:

- Is additional information available that either supports or suggests modifications to this proposal concerning off-stream raw water storage?
- How should a system address the concern that water in off-stream raw water storage reservoirs may become contaminated through processes like algal growth, run-off, roosting birds, and activities on the watershed?

5. Pre-Sedimentation With Coagulant

a. *What is EPA proposing today?* Presedimentation is a preliminary treatment process used to remove particulate material from the source water before the water enters primary sedimentation and filtration processes in a treatment plant. EPA is proposing to award a presumptive 0.5 log *Cryptosporidium* treatment credit for presedimentation that is installed after LT2ESWTR monitoring and meets the following three criteria:

(1) The presedimentation basin must be in continuous operation and must treat all of the flow reaching the treatment plant.

(2) The system must continuously add a coagulant to the presedimentation basin.

(3) The system must demonstrate on a monthly basis at least 0.5 log reduction of influent turbidity through the presedimentation process in at least 11 of the 12 previous consecutive months. This monthly demonstration of turbidity reduction must be based on the arithmetic mean of at least daily turbidity measurements in the presedimentation basin influent and effluent, and must be calculated as follows:

Monthly mean turbidity log reduction = $\log_{10}$(monthly mean of daily influent turbidity) − $\log_{10}$(monthly mean of daily effluent turbidity).

If the presedimentation process has not been in operation for 12 months, the system must verify on a monthly basis at least 0.5 log reduction of influent turbidity through the presedimentation process, calculated as specified in this paragraph, for at least all but any one of the months of operation.

Systems with presedimentation in place at the time they begin LT2ESWTR *Cryptosporidium* monitoring are not eligible for the 0.5 log presumptive credit and must sample after the basin when in use for the purpose of determining their bin assignment. The use of presedimentation during LT2ESWTR monitoring must be consistent with routine plant operation and must be recorded by the system. Guidance on monitoring is provided in Public Water System Guidance Manual for Source Water Monitoring under the LT2ESWTR (USEPA 2003g), which is available in draft in the docket for today's proposal.

b. *How was this proposal developed?* Presedimentation is used to remove gravel, sand, and other gritty material

from the raw water and dampen particle loading to the rest of the treatment plant. Presedimentation is similar to conventional sedimentation, except that presedimentation may be operated at higher loading rates and may not involve use of chemical coagulants. Also, some systems operate the presedimentation process periodically and only in response to periods of high particle loading.

Because presedimentation reduces particle concentrations, it is expected to reduce *Cryptosporidium* levels. In addition, by dampening variability in source water quality, presedimentation may improve the performance of subsequent treatment processes. In general, the efficacy of presedimentation in lowering particle levels is influenced by a number of water quality and treatment parameters including surface loading rate, temperature, particle concentration, coagulation, and characteristics of the sedimentation basin.

The Stage 2–M–DBP Agreement in Principle recommends 0.5 log presumptive *Cryptosporidium* treatment credit for presedimentation with the use of coagulant. Today's proposal is consistent with this recommendation. However, the proposed requirement for demonstrated turbidity reduction as a condition for presedimentation credit represents a change from the November 2001 pre-proposal draft of the LT2ESWTR (USEPA 2001g). Rather than a requirement for turbidity removal, the 2001 pre-proposal draft included criteria for maximum overflow rate and minimum influent turbidity as conditions for the 0.5 log presedimentation credit.

The Science Advisory Board (SAB) reviewed the criteria and supporting information for presedimentation credit in the November 2001 pre-proposal draft (see section VII.K). In written comments from a December 2001 meeting of the SAB Drinking Water Committee, the panel concluded that available data were minimal to support a 0.5 log presumptive credit and recommended that no credit be given for presedimentation. Additionally, the panel stated that performance criteria other than overflow rate need to be included if credit is to be given for presedimentation.

Due to this finding by the SAB, EPA further reviewed data on removal of aerobic spores (as an indicator of *Cryptosporidium* removal) and turbidity in full-scale presedimentation basins. As shown later in this section, these data indicate that presedimentation basins achieving a monthly mean reduction in turbidity of at least 0.5 log have a high likelihood of reducing mean *Cryptosporidium* levels by 0.5 log or more. Consequently, EPA has determined that it is appropriate to use turbidity reduction as a performance criterion for awarding *Cryptosporidium* treatment credit to presedimentation basins. The Agency believes this performance criterion addresses the concerns raised by the SAB.

The Agency has concluded that it is appropriate to limit eligibility for the 0.5 log presumptive *Cryptosporidium* treatment credit to systems that install presedimentation after LT2ESWTR monitoring. Systems with presedimentation in place prior to initiation of LT2ESWTR *Cryptosporidium* monitoring may sample after the presedimentation basin to determine their bin assignment. In this case, the effect of presedimentation in reducing *Cryptosporidium* levels will be reflected in the monitoring results and bin assignment. Systems that monitor after presedimentation are not subject to the operational and performance requirements associated with the 0.5 log credit. The SAB agreed that a system should be able to sample after the presedimentation treatment process for appropriate bin placement.

In considering criteria for awarding *Cryptosporidium* removal credit to presedimentation, EPA has evaluated both published studies and data submitted by water systems using presedimentation. There is relatively little published data on the removal of *Cryptosporidium* by presedimentation. Consequently, EPA has reviewed studies that investigated *Cryptosporidium* removal by conventional sedimentation basins. These studies are informative regarding potential levels of performance, the influence of water quality parameters, and correlation of *Cryptosporidium* removal with removal of potential surrogates. However, removal efficiency in conventional sedimentation basins may be greater than in presedimentation due to lower surface loading rates, higher coagulant doses, and other factors. To supplement these studies, EPA has evaluated data provided by utilities on removal of other types of particles, primarily aerobic spores, in the presedimentation processes of full scale plants. Data indicate that aerobic spores may serve as a surrogate for *Cryptosporidium* removal by sedimentation (Dugan *et al.* 2001).

i. Published studies of *Cryptosporidium* removal by conventional sedimentation basins. Table IV–10 summarizes results from published studies of *Cryptosporidium* removal by conventional sedimentation basins.

TABLE IV–10.—SUMMARY OF PUBLISHED STUDIES OF *Cryptosporidium* REMOVAL BY CONVENTIONAL SEDIMENTATION BASINS

Author(s)	Plant/process type	*Cryptosporidium* removal by sedimentation
Dugan et al. (2001)	Pilot scale conventional	0.6 to 1.6 log (average 1.3 log).
States et al. (1997)	Full scale conventional with primary and secondary sedimentation.	0.41 log.
Edzwald and Kelly (1998)	Bench scale sedimentation	0.8 to 1.2 log.
Payment and Franco (1993)	Full scale conventional (2 plants)	3.8 log and 0.7 log.
Kelly et al. (1995)	Full scale conventional (two stage lime softening)	0.8 log.
	Full scale conventional (two stage sedimentation)	0.5 log.
Patania et al. (1995)	Pilot scale conventional (3 plants)	2.0 log (median).

Dugan *et al.* (2001) evaluated the ability of conventional treatment to control *Cryptosporidium* under different water quality and treatment conditions on a small pilot scale plant that had been demonstrated to provide equivalent performance to a larger plant. Under optimal coagulation conditions, oocyst removal across the sedimentation basin ranged from 0.6 to 1.6 log, averaging 1.3 log. Suboptimal coagulation conditions (underdosed relative to jar test predictions) significantly reduced plant performance with oocyst removal in the

sedimentation basin averaging 0.20 log. Removal of aerobic spores, total particle counts, and turbidity all correlated well with removal of *Cryptosporidium* by sedimentation.

States *et al.* (1997) monitored *Cryptosporidium* removal at the Pittsburgh Drinking Water Treatment Plant (65–70 million gallons per day (MGD)). The clarification process included ferric chloride coagulation, flocculation, and settling in both a small primary basin and a 120 MG secondary sedimentation basin. Geometric mean *Cryptosporidium* levels in the raw and settled water were 31 and 12 oocysts/100 L, respectively, indicating a mean reduction of 0.41 log.

Edzwald and Kelly (1998) conducted a bench-scale study to determine the optimal coagulation conditions with different coagulants for removing *Cryptosporidium* oocysts from spiked raw waters. Under optimal coagulation conditions, the authors observed oocysts reductions through sedimentation ranging from 0.8 to 1.2 log.

Payment and Franco (1993) measured *Cryptosporidium* and other microorganisms in raw, settled, and filtered water samples from drinking water treatment plants in the Montreal area. The geometric mean of raw and settled water *Cryptosporidium* levels in one plant were 742 and 0.12 oocysts/100 L, respectively, suggesting a mean removal of 3.8 log. In a second plant, mean removal by sedimentation was reported as 0.7 log, with raw and settled water *Cryptosporidium* levels reported as <2 and <0.2 oocysts/L, respectively.

Kelley *et al.* (1995) monitored *Cryptosporidium* levels in the raw, settled, and filtered water of two water treatment plants (designated site A and B). Both plants included two-stage sedimentation. At site A, mean raw and settled water *Cryptosporidium* levels were 60 and 9.5 oocysts/100 L, respectively, suggesting a mean removal of 0.8 log by sedimentation. At site B, mean raw and settled water *Cryptosporidium* levels were 53 and 16 oocysts/100 L, respectively, for an average removal by sedimentation of 0.5 log. Well water was intermittently blended in the second stage of sedimentation at site B, which may have reduced settled and filtered water pathogen levels.

Patania *et al.* (1995) evaluated removal of *Cryptosporidium* in four pilot scale plants. Three of these were conventional and one used in-line filtration (rapid mix followed by filtration). *Cryptosporidium* removal was generally 1.4 to 1.8 log higher in the process trains with sedimentation compared to in-line filtration. While the effectiveness of sedimentation for organism removal varied widely under the conditions tested, the median removal of *Cryptosporidium* by sedimentation was approximately 2.0 log.

ii. Data supplied by utilities on the removal of spores by presedimentation. Data on the removal of *Cryptosporidium* and spores (Bacillus subtilis and total aerobic spores) during operation of full-scale presedimentation basins were collected independently and reported by three utilities: St. Louis, MO, Kansas City, MO, and Cincinnati, OH. *Cryptosporidium* oocysts were not detected in raw water at these locations at levels sufficient to calculate log removals of oocysts directly. However, aerobic spores were present in the raw water of these utilities at high enough concentrations to measure log removals through presedimentation as a surrogate for *Cryptosporidium* removal. As noted earlier, data from Dugan *et al.* (2001) demonstrate a correlation between removal of aerobic spores and *Cryptosporidium* through sedimentation under optimal coagulation conditions. A summary of the spore removal data supplied by the these utilities is shown in Table IV–11.

TABLE IV–11.—MEAN SPORE REMOVAL FOR FULL-SCALE PRESEDIMENTATION BASINS REPORTED BY THREE UTILITIES

Reporting utility	Mean spore removal
St. Louis Water Division.	1.1 log (B. subtilis).
Kansas City Water Services Department.	0.8 log (B. subtilis) (with coagulant).
	0.46 log (B. subtilis) (without coagulant).
Cincinnati Water Works.	0.6 log (total aerobic spores).

The St. Louis Water Division operates four presedimentation basins at one facility. Coagulant addition prior to presedimentation includes polymer and occasional dosages of ferric sulfate. Bacillus subtilis spore samples were collected from June 1998 to September 2000. Reported mean spore concentrations in the raw water and following presedimentation were 108,326 and 8,132 cfu/100 mL, respectively, showing an average removal of 1.1 log by presedimentation.

The Kansas City Water Services Department collected Bacillus subtilis spore samples from January to November 2000 from locations before and after one of the facility's six presedimentation basins. Sludge generated by the primary clarifier of a softening process was recycled to the head of the presedimentation basins during the entire study period. In addition, coagulant (polymer and/or ferric sulfate) was added prior to presedimentation when raw water turbidity was higher. During periods when coagulant was added, mean spore levels before and after presedimentation were 102,292 and 13,154 cfu/100 mL, respectively, demonstrating a mean removal of 0.9 log. When no ferric sulfate or polymer was used, mean presedimentation influent and effluent spore levels were 13,296 and 4,609 cfu/100 mL, respectively, for an average reduction of 0.46 log.

The Cincinnati Water Works operates a treatment plant using lamella plate settlers for presedimentation. Lamella plate settlers are inclined plates added to a sedimentation basin to significantly increase the surface area available for particle settling. Coagulant (alum and polymer) is added to the raw water prior to presedimentation. Total aerobic spore samples were collected from January 1998 through December 2000. The mean concentration of spores decreased from 20,494 cfu/100 mL in the raw water to 4,693 cfu/100 mL in the presedimentation effluent, indicating a mean spore removal of 0.64 log.

In conclusion, literature studies clearly establish that sedimentation basins are capable of achieving greater than 0.5 log reduction in *Cryptosporidium* levels. Further, the data supplied by utilities on reduction in aerobic spore counts across full scale presedimentation basins demonstrate that presedimentation can achieve mean reductions of greater than 0.5 log under routine operating conditions and over an extended time period. Thus, these data suggest that a 0.5 log presumptive credit for *Cryptosporidium* removal by presedimentation is appropriate under certain conditions.

With respect to the conditions under which the 0.5 log presumptive credit for presedimentation is appropriate, the data do not demonstrate that this level of removal can be achieved consistently without a coagulant. In addition, available data do not establish aerobic spores as an effective indicator of *Cryptosporidium* removal in the absence of a coagulant. Thus, supporting data are consistent with a requirement that systems apply a coagulant to be eligible for the presumptive 0.5 log presedimentation credit. Moreover, such a requirement is consistent with the Agreement in Principle, which recommends 0.5 log credit for presedimentation basins with a coagulant.

EPA also has concluded that presedimentation basins need to be operated continuously and treat 100% of the plant flow in order to reasonably ensure that the process will reduce influent *Cryptosporidium* levels by at least 0.5 log over the course of a full year. The Agency recognizes that, depending on influent water quality, some systems may determine it is more prudent to operate presedimentation basins intermittently in response to fluctuating turbidity levels. By proposing these conditions for the presumptive presedimentation credit, EPA is not recommending against intermittent operation of presedimentation basins. Rather, EPA is attempting to identify the conditions under which a 0.5 log presumptive credit for presedimentation is warranted.

In response to the SAB panel recommendation that performance criteria other than overflow rate be included if credit is to be given for presedimentation, EPA analyzed the relationship between removal of spores and reduction in turbidity through presedimentation for the three utilities that supplied these data. Results of this analysis are summarized in Table IV–12, which shows the relationship between monthly mean turbidity reduction and the percent of months when mean spore removal was at least 0.5 log.

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Table IV-12.-- Relationship Between Mean Turbidity Reduction and the Percent of Months When Mean Spore Removal Was at Least 0.5 Log

Log Reduction in Turbidity (monthly mean)	Percent of Months with at least 0.5 Log Mean Reduction in Spores
>= 0.1	64%
>= 0.2	68%
>= 0.3	73%
>= 0.4	78%
>= 0.5	89%
>= 0.6	91%
>= 0.7	90%
>= 0.8	89%
>= 0.9	95%
>= 1.0	96%

Source: Data from Cincinnati Water Works, Kansas City Water Services Department, and St. Louis Water Division

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Within the available data set, achieving a mean turbidity reduction of at least 0.5 log appears to provide approximately a 90% assurance that average spore removal will be 0.5 log or greater. The underlying data are shown graphically in Figure IV–4. Based on this information, EPA has concluded that it is appropriate to require 0.5 log turbidity reduction, determined as a monthly mean of daily turbidity readings, as an operating condition for the 0.5 log presumptive *Cryptosporidium* treatment credit for presedimentation. Further, EPA is proposing that systems must meet the 0.5 log turbidity reduction requirement in at least 11 of the 12 previous months on an ongoing basis to remain eligible for the presedimentation credit.

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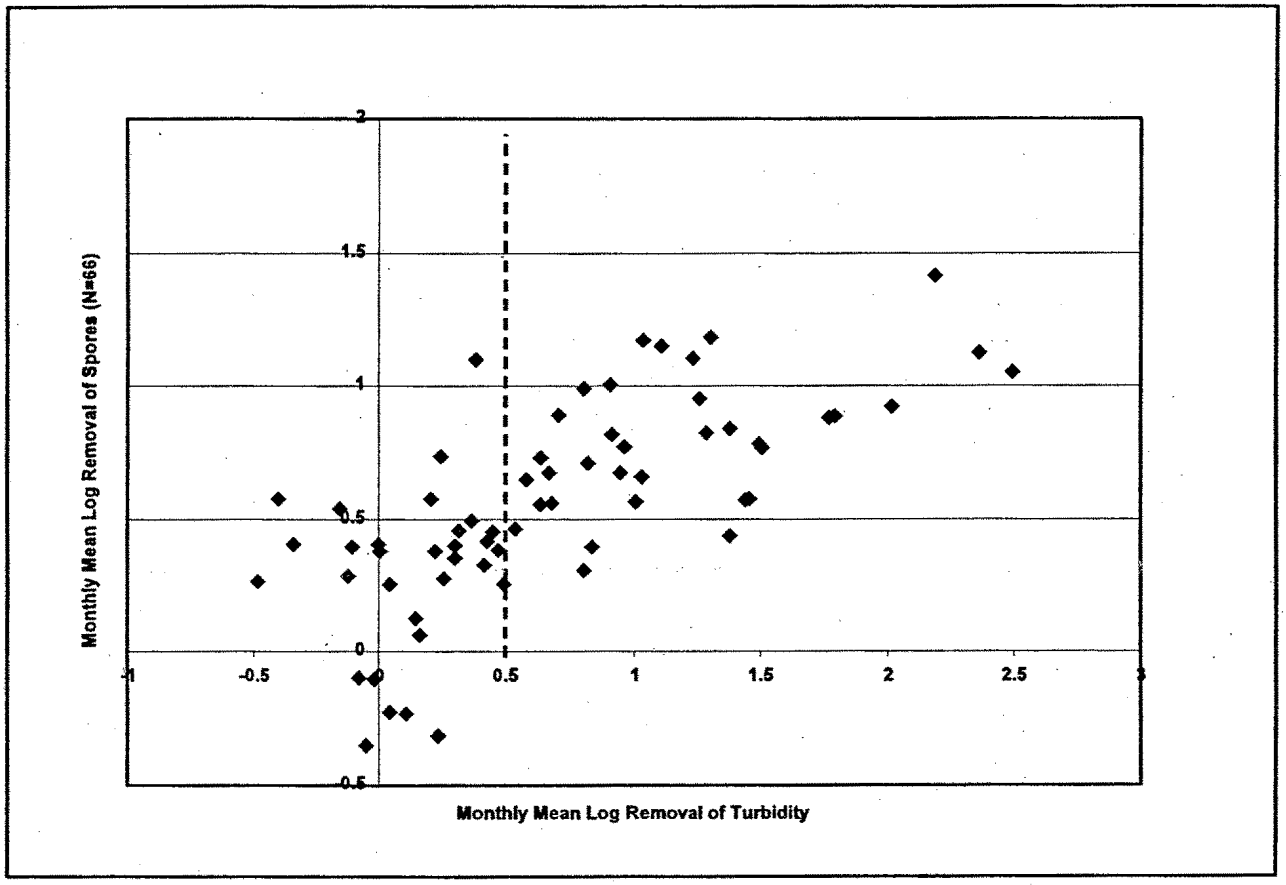

Figure IV-4.-- Monthly Mean Log Removal of Spores from Presedimentation vs. Monthly Mean Turbidity Log Reduction

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c. Request for comment. EPA requests comment on the proposed criteria for awarding credit to presedimentation. EPA would particularly appreciate comment on the following issues:

- Whether the information cited in this proposal supports the proposed credit for presedimentation and the operating conditions under which the credit will be awarded;
- Additional information that either supports or suggest modifications to the proposed performance criteria and presumptive credit;
- Today's proposal requires systems using presedimentation to sample after the presedimentation basin, and these systems are not eligible to receive additional presumptive *Cryptosporidium* removal credit for presedimentation. However, systems are also required to collect samples prior to chemical treatment, and EPA recognizes that some plants provide chemical treatment to water prior to, or during, presedimentation. EPA requests comment on how this situation should be handled under the LT2ESWTR.
- Whether and under what conditions factors like low turbidity raw water, infrequent sludge removal, and wind would make compliance with the 0.5 log turbidity removal requirement infeasible.

6. Bank Filtration

a. *What is EPA proposing today?* EPA is proposing to award additional *Cryptosporidium* treatment credit (0.5 or 1.0 log) for systems that implement bank filtration as a pre-treatment technique if it meets the design criteria specified in this section. To be eligible for credit as a pre-treatment technique, bank filtration collection devices must meet the following criteria:

- Wells are drilled in an unconsolidated, predominantly sandy aquifer, as determined by grain-size analysis of recovered core material—the recovered core must contain greater than 10% fine-grained material (grains less than 1.0 mm diameter) in at least 90% of its length;
- Wells are located at least 25 feet (in any direction) from the surface water source to be eligible for 0.5 log credit; wells located at least 50 feet from the source surface water are eligible for 1.0 log credit;
- The wellhead must be continuously monitored for turbidity to ensure that no system failure is occurring. If the monthly average of daily maximum turbidity values exceeds 1 NTU then the system must report this finding to the State. The system must also conduct an assessment to determine the cause of the high turbidity levels in the well and consult with the State regarding whether previously allowed credit is still appropriate.

Systems using existing bank filtration as pretreatment to a filtration plant at the time the systems are required to conduct *Cryptosporidium* monitoring, as described in section IV.A, must sample the well effluent for the purpose of determining bin classification. Where bin classification is based on monitoring the well effluent, systems are not eligible to receive additional credit for

bank filtration. In these cases, the performance of the bank filtration process in reducing *Cryptosporidium* levels will be reflected in the monitoring results and bin classification.

Systems using bank filtered water without additional filtration typically must collect source water samples in the surface water (*i.e.*, prior to bank filtration) to determine bin classification. This applies to systems using bank filtration to meet the *Cryptosporidium* removal requirements of the IESWTR or LT1ESWTR under the provisions for alternative filtration demonstration in 40 CFR 141.173(b) or 141.552(a). Note that the proposed bank filtration criteria for *Cryptosporidium* removal credit under the LT2ESWTR do not apply to existing State actions to provide alternative filtration *Cryptosporidium* removal credit for IESWTR or LT1ESWTR compliance.

In the case of systems that use GWUDI sources without additional filtration and that meet all the criteria for avoiding filtration in 40 CFR 141.71, samples must be collected from the ground water (*e.g.*, the well). Further, such systems must comply with the requirements of the LT2ESWTR that apply to unfiltered systems, as described in section IV.B.

b. *How was this proposal developed?* This section describes the bank filtration treatment process, provides more detail on the aquifer types and ground water collection devices that are eligible for bank filtration credit, and describes the data supporting the proposed requirements.

Bank filtration is a water treatment process that makes use of surface water that has naturally infiltrated into ground water via the river bed or bank(s) and is recovered via a pumping well. Stream-bed infiltration is typically enhanced by the pumping action of near-stream wells (*e.g.*, water supply, irrigation). Bank filtrate is water drawn into a pumping well from a nearby surface water source which has traveled through the subsurface, either vertically, horizontally or both, mixing to some degree with other ground water. Through bank filtration, microorganisms and other particles are removed by contact with the aquifer materials.

The bank filtration removal process performs most efficiently when the aquifer is comprised of granular materials with open pore-space for water flow around the grains. In these granular porous aquifers, the flow path is meandering, thereby providing ample opportunity for the organism to come into contact with and attach to a grain surface. Although detachment can occur, it typically occurs at a very slow rate so that organisms remain attached to a grain for long periods. When ground water travel times from source water to well are long or when little or no detachment occurs, most organisms will become inactivated before they can enter a well. Thus, bank filtration relies on removal, but also, in some cases, on inactivation to protect wells from pathogen contamination.

Only Wells Located in Unconsolidated, Predominantly Sandy Aquifers Are Eligible

Only granular aquifers are eligible for bank filtration credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles and minor cement. The aquifer material is required to be unconsolidated, with subsurface samples friable upon touch. Uncemented granular aquifers are typically formed by alluvial or glacial processes. Such aquifers are usually identified on a detailed geologic map (*e.g.*, labeled as Quaternary alluvium).

Under today's proposal, a system seeking *Cryptosporidium* removal credit must characterize the aquifer at the well site to determine aquifer properties. At a minimum, the aquifer characterization must include the collection of relatively undisturbed, continuous, core samples from the surface to a depth equal to the bottom of the well screen. The proposed site must have substantial core recovery during drilling operations; specifically, the recovered core length must be at least 90% of the total projected depth to the well screen.

Samples of the recovered core must be submitted to a laboratory for sieve analysis to determine grain size distribution over the entire recovered core length. Each sieve sample must be acquired at regular intervals over the length of the recovered core, with one sample representing a composite of each two feet of recovered core. A two-foot sampling interval reflects the necessity to sample the core frequently without imposing an undue burden. Because it is anticipated that wells will range from 50 to 100 foot in depth, a two-foot sampling interval will result in about 25 to 50 samples for analysis. Each sampled interval must be examined to determine if more than ten percent of the grains in that interval are less than 1.0 mm in diameter (#18 sieve size). In the U.S. Department of Agriculture soil classification system, the #18 sieve separates very coarse sands from coarse sands. The length of core (based on the samples from two-foot intervals) with more than ten percent of the grains less than 1.0 mm in diameter must be summed to determine the overall core length with sufficient fine-grained material so as to provide adequate removal. An aquifer is eligible for removal credit if at least 90% of the sampled core length contains sufficient fine-grained material as defined in this section.

Cryptosporidium oocysts have a natural affinity for attaching to fine-grained material. A study of oocyst removal in sand columns shows greater oocyst removal in finer-grained sands than in coarser-grained sands (Harter *et al.* 2000). The core sampling procedure described in this section is designed to measure the proportion of fine-grained sands (grains less than 1.0 mm in diameter) so as to ensure that a potential bank filtration site is capable of retarding transport (or removing) oocysts during ground water flow from the source surface water to the water supply well. The value of 1.0 mm for the bounding size of the sand grains was determined based on calculations performed by Harter using data from Harter *et al.* (2000). Harter showed that, for ground water velocities typical of a bank filtration site (1.5 to 15 m/day), a typical bank filtration site composed of grains with a diameter of 1.0 mm would achieve at least 1.0 log removal over a 50 foot transport distance. Larger-sized grains would achieve less removal, all other factors being equal.

Alluvial and glacial aquifers are complex mixtures of sand, gravel and other sized particles. Particles of similar size are often grouped together in the subsurface, due to sorting by flowing water that carries and then deposits the particles. Where there exists significant thickness of coarse-grained particles, such as gravels, with few finer materials, there is limited opportunity for oocyst removal. When the total gravel thickness, as measured in a core, exceeds 10%, it is more likely (based on analysis of ground water flow within mixtures containing differing-sized grains) that the gravel-rich intervals are interconnected. Interconnected gravel can form a continuous, preferential flow path from the source surface water to the water supply well. Where such preferential flow paths exist, a preponderance of the total ground water flow occurs within the preferential flow path, ground water velocity is higher, and natural filtration is minimal. A proposed bank filtration site is acceptable if at least 90% of the core length contains grains with sufficient fine-grained material (diameter less than 1.0 mm); that is, it is acceptable if the core contains less than 10% gravel-rich intervals.

Aquifer materials with significant fracturing are capable of transmitting

ground water at high velocity in a direct flow path with little time or opportunity for die-off or removal of microbial pathogens. Consolidated aquifers, fractured bedrock, and karst limestone are aquifers in which surface water may enter into a pumping well by flow along a fracture, a solution-enhanced fracture conduit, or other preferential pathway. Microbial pathogens found in surface water are more likely to be transported to a well via these direct or preferential pathways. *Cryptosporidium* outbreaks have been associated with consolidated aquifers, such as a fractured chalk aquifer (Willocks *et al.* 1998) or a karst limestone (solution-enhanced fractured) aquifer (Bergmire-Sweat *et al.* 1999). These outbreaks show that the oocyst removal performance of consolidated aquifers is undermined by preferential water flow and oocyst transport through rock fractures or through rock dissolution zones. Wells located in these aquifers are not eligible for bank filtration credit because the flow paths are direct and the average ground water velocity is high, so that little inactivation or removal would be expected. Therefore, only unconsolidated aquifer are eligible for bank filtration oocyst removal credit.

A number of devices are used for the collection of ground water including horizontal and vertical wells, spring boxes, and infiltration galleries. Among these, only horizontal and vertical wells are eligible for log removal credit. The following discussion presents characteristics of ground water collection devices and the basis for this proposed requirement.

Horizontal wells are designed to capture large volumes of surface water recharge. They typically are constructed by the excavation of a central vertical caisson with laterals that extend horizontally from the caisson bottom in all directions or only under the riverbed. Horizontal wells are usually shallower than vertical wells because of the construction expense. Ground water flow to a horizontal well that extends under surface water is predominantly downward. In contrast, ground water flow to a vertical well adjacent to surface water may be predominantly in the horizontal direction. Surface water may have a short ground water flow path to a horizontal well if the well extends out beyond the bank.

Hancock *et al.* (1998) analyzed samples from eleven horizontal wells and found *Cryptosporidium*, Giardia or both in samples from five of those wells. These data suggest that some horizontal wells may not be capable of achieving effective *Cryptosporidium* removal by bank filtration. Insufficient data are currently available to suggest that horizontal well distances from surface water should be greater than distances established for vertical wells. Two ongoing studies in Wyoming (Clancy Environmental Consultants 2002) and Nebraska (Rice 2002) are collecting data at horizontal well sites.

A spring box is located at the ground surface and is designed to contain spring outflow and protect it from surface contamination until the water is utilized. Spring boxes are typically located where natural processes have enhanced and focused ground water discharge into a smaller area and at a faster volumetric flow rate than elsewhere (*i.e.*, a spring). Often, localized fracturing or solution enhanced channels are the cause of the focused discharge to the spring orifice. Fractures and solution channels have significant potential to transport microbial contaminants so that natural filtration may be poor. Thus, spring boxes are not proposed to be eligible for bank filtration credit.

Cryptosporidium monitoring results (Hancock *et al.* 1998) and outbreaks are used to evaluate ground water collection devices. Hancock *et al.* sampled thirty five springs for *Cryptosporidium* oocysts and Giardia cysts. Most springs were used as drinking water sources and sampling was conducted to determine if the spring should be considered as a GWUDI source. *Cryptosporidium* oocysts were found in seven springs; Giardia cysts were found in five springs; and either oocysts or cysts were found in nine springs (26%). A waterborne cryptosporidiosis outbreak in Medford, Oregon (Craun *et al.* 1998) is associated with a spring water supply collection device. Also, a more recent, smaller outbreak of giardiasis in an Oregon campground is associated with a PWS using a spring. The high percentage of springs contaminated with pathogenic protozoan, the association with recent outbreaks, and an apparent lack of bank filtration capability indicate that spring boxes must not be eligible for bank filtration credit.

An infiltration gallery (or filter crib) is typically a slotted pipe installed horizontally into a trench and backfilled with granular material. The gallery is designed to collect water infiltrating from the surface or to intercept ground water flowing naturally toward the surface water (Symons *et al.* 2000). In some treatment plants, surface water is transported to a point above an infiltration gallery and then allowed to infiltrate. The infiltration rate may be manipulated by varying the properties of the backfill or the nature of the soil-water interface. Because the filtration properties of the material overlying an infiltration gallery may be designed or purposefully altered to optimize oocyst removal or for other reasons, this engineered system is not bank filtration, which relies solely on the natural properties of the system.

A 1992 cryptosporidiosis outbreak in Talent, Oregon was associated with poor performance of an infiltration gallery underneath Bear Creek (Leland *et al.* 1993). In this case, the ground water-surface water interface and the engineered materials beneath did not sufficiently reduce the high oocyst concentration present in the source water. The association of an infiltration gallery with an outbreak, the design that relies on engineered materials rather than the filtration properties of natural filtration media, and the shallow depth of constructed infiltration galleries, such that they typically are not located greater than 25 feet from the surface and surface water recharge, all indicate that infiltration galleries must not be eligible for bank filtration credit.

EPA notes that under the demonstration of performance credit described in section IV.C.17, States may consider awarding *Cryptosporidium* removal credit to infiltration galleries where the State determines, based on site-specific testing with a State-approved protocol, that such credit is appropriate (*i.e.*, that the process reliably achieves a specified level of *Cryptosporidium* removal on a continuing basis).

Wells Located 25 Feet From the Surface Water Source Are Eligible for 0.5 Log Credit; Wells Located 50 Feet From the Surface Water Source Are Eligible for 1.0 Log Credit

A vertical or horizontal well located adjacent to a surface water body is eligible for bank filtration credit if there is sufficient ground water flow path length to effectively remove oocysts. For vertical wells, the wellhead must be located at least 25 horizontal feet from the surface water body for 0.5 log *Cryptosporidium* removal credit and at least 50 horizontal feet from the surface water body for 1.0 log *Cryptosporidium* removal credit. For horizontal wells, the laterals must be located at least 25 feet distant from the normal-flow surface water riverbed for 0.5 log *Cryptosporidium* removal credit and at least 50 feet distant from the normal-flow surface water riverbed for 1.0 log *Cryptosporidium* removal credit.

The ground water flow path to a vertical well is the measured distance from the edge of the surface water body, under high flow conditions (determined by the mapped extent of the 100 year

floodplain elevation boundary or floodway, as defined in Federal Emergency Management Agency (FEMA) flood hazard maps), to the wellhead. The ground water flow path to a horizontal well is the measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral.

The floodway is defined by FEMA as the area of the flood plain where the water is likely to be deepest and fastest. The floodway is shown on FEMA digital maps (known as Q3 flood data maps), which are available for 11,990 communities representing 1,293 counties in the United States. Systems may identify the distance to surface water using either the 100 year return period flood elevation boundary or by determining the floodway boundary using methods similar to those used in preparing FEMA flood hazard maps. The 100 year return period flood elevation boundary is expected to be wider than the floodway but that difference may vary depending on local conditions. Approximately 19,200 communities in the United States have flood hazard maps that show the 100 year return period flood elevation boundary. If local FEMA floodway hazard maps are unavailable or do not show the 100 year flood elevation boundary, then the utility must determine either the floodway or 100 year flood elevation boundary.

The separation distance proposed for *Cryptosporidium* removal credit is based, in part, on measured data for the removal of oocyst surrogate biota in full-scale field studies. A variety of surrogate and indicator organisms were analyzed in each study evaluated for today's proposal. However, only two non-pathogenic organisms, anaerobic clostridia spores and aerobic endospores, are resistant to inactivation in the subsurface, approximately similar in size and shape to oocysts, and sufficiently ubiquitous in both surface water and ground water so that log removal can be calculated during passage across the surface water—ground water interface and during transport within the aquifer.

Anaerobic spores are typically estimated at about 0.3–0.4 μm in diameter as compared with 4–6 μm for oocysts. Aerobic spores, such as endospores of the bacterium Bacillus subtilis, are slightly larger than anaerobic spores, typically $0.5 \times 1.0 \times 2.0$ μm in diameter (Rice *et al.* 1996). Experiments conducted by injecting Bacillus subtilis spores into a gravel aquifer show that they can be very mobile in the subsurface environment (Pang *et al.* 1998). As presented in the following discussion, available data indicate similar removal of both aerobic and anaerobic spores, either during passage across the surface water—ground water interface or during ground water flow. These data suggest that anaerobic spores, like aerobic spores, may be suitable surrogate measures of *Cryptosporidium* removal by bank filtration.

Available data establish that during bank filtration, significant removal of anaerobic and aerobic spores can occur during passage across the surface water-ground water interface, with lesser removal occurring during ground water transport within the aquifer away from that interface. The ground water-surface water interface is typically comprised of finer grained material that lines the bottom of the riverbed. Typically, the thickness of the interface is small, typically a few inches to a foot. The proposed design criteria of 25 and 50 feet for 0.5 and 1.0 log *Cryptosporidium* removal credit, respectively, are based on EPA's analysis of pathogen and surrogate monitoring data from bank filtration sites. Most of these data are from studies of aquifers developed in Dutch North Sea margin sand dune fields and, therefore, represent optimal removal conditions consistent with a homogenous, well sorted (by wind), uniform sand filter.

Medema *et al.* (2000) measured 3.3 log removal of anaerobic spores during transport over a 13 m distance from the Meuse River into adjacent ground water. Arora *et al.* (2000) measured greater than 2.0 log removal of anaerobic spores during transport from the Wabash River to a horizontal collector well. Havelaar *et al.* (1995) measured 3.1 log removal of anaerobic spores during transport over a 30 m distance from the Rhine River to a well and 3.6 log removal over a 25 m distance from the Meuse River to a well. Schijven *et al.* (1998) measured 1.9 log removal of anaerobic spores over a 2 m distance from a canal to a monitoring well. Using aerobic spores, Wang *et al.* (2001) measured 1.8 log removal over a 2 foot distance from the Ohio river to a monitoring well beneath the river.

During transport solely within shallow ground water (*i.e.*, not including removal across the surface water-ground water interface), Medema *et al.* (2000) measured approximately 0.6 log removal of anaerobic spores over a distance of 39 feet. Using aerobic spores, Wang *et al.* (2001) measured 1.0 log removal of aerobic spores over a 48 foot distance from a monitoring well beneath a river to a horizontal well lateral.

At distances relatively far from an injection well in a deep, anaerobic aquifer, thereby minimizing the effects of injection, Schijven *et al.* measured negligible removal of anaerobic spores over a 30 m distance. However, few bank filtration systems occur in deeper, anaerobic ground water so these data may not apply to a typical bank filtration system in the United States.

These data demonstrate that during normal and low surface water elevations, the surface water-ground water interface performs effectively to remove microbial contamination. However, there will typically be high water elevation periods during the year, especially on uncontrolled rivers, that alter the nature and performance of the interface due to flood scour, typically for short periods. During these periods, lower removals would be expected to occur.

Averaging *Cryptosporidium* oocyst removal over the period of a year requires consideration of both high and low removal periods. During most of the year, high log removal rates would be expected to predominate (*e.g.*, 3.3 log removal over 42 feet) due to the removal achieved during passage across the surface water-ground water interface. During short periods of flooding, substantially lower removal rates may occur (*e.g.*, 0.5 log removal over 39 feet) due to scouring of the riverbed and removal of the protective, fine-grained material. By considering all time intervals with differing removal rates over the period of a year, EPA is proposing that 0.5 log removal over 25 feet (8 m) and 1.0 log removal over 50 feet (16 m) are reasonable estimates of the average performance of a bank filtration system over a year. This proposal is generally supported by colloidal filtration theory modeling results using data characteristic of the aquifers in Louisville and Cincinnati and column studies of oocyst transport in sand (Harter *et al.* 2000).

Wells must be continuously monitored for turbidity

Under the Surface Water Treatment Rule (40 CFR 141.73(b)(1)) the turbidity level of slow sand filtered water must be 1 NTU or less in 95% of the measurements taken each month. Turbidity sampling is required once every four hours, but may be reduced to once per day under certain conditions. Although slow sand filtration is not bank filtration, similar pathogen removal mechanisms are expected to occur in both processes. Just as turbidity monitoring is used to provide assurance that the removal credit assigned to a slow sand filter is being realized, EPA

is proposing continuous turbidity monitoring for all bank filtration wells that receive credit.

If monthly average turbidity levels (based on daily maximum values in the well) exceed 1 NTU, the system is required to report to the State and present an assessment of whether microbial removal has been compromised. If the State determines that microbial removal has been compromised, the system must not receive credit for bank filtration until the problem has been remediated. The turbidity performance requirement for bank filtration is less strict than that for slow sand filtration because, unlike slow sand filtration, bank filtration is a pre-treatment technique followed by conventional or direct filtration.

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Table IV-13.-- Summary Table Showing All Requirements for Bank Filtration Pre-treatment Log Removal Credit

Eligible for Bank Filtration Credit?	Yes, eligible for bank filtration credit (with continuous turbidity monitoring*) and State approval	No, not eligible for bank filtration credit
Some GWUDI Sites Eligible	• Unconsolidated, young, sandy**, granular aquifer	• Located in a hydrogeologic setting consisting of consolidated material
Some Water Collection Devices Eligible	• Vertical wells located greater than 25 feet (0.5 log credit) or 50 feet (1.0 log credit) from surface water • Horizontal wells with laterals that are no closer than 25 feet (0.5 log credit) or 50 feet (1.0 log credit) from the river channel under normal flow conditions	• Spring boxes • Infiltration galleries • Horizontal wells with laterals that extend within 25 feet of the river channel under normal flow conditions • Vertical wells located fewer than 25 feet from surface water (measured from the mapped FEMA floodway boundary)

*Average monthly turbidity values (based on daily maximum values) exceeding 1 NTU trigger an investigation by the system and consultation with the primacy agency

**Based on laboratory analysis of continuous core samples collected at the site; At least 90% of the recovered core length must contain intervals in which more than 10% of the grains are less than 1.0 mm in diameter.

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In summary, EPA believes that the measured full-scale field data from operating bank filtration systems, the turbidity monitoring provision, and the design criteria for aquifer material, collection device type, and setback distance, together provide assurance that the presumptive log removal credit will be achieved by bank filtration systems that conform to the requirements in today's proposal.

c. *Request for comment.* The Agency requests comment on the following issues concerning bank filtration:

• The performance of bank filtration in removing *Cryptosporidium* or surrogates to date at sites currently using this technology (*e.g.* sites with horizontal wells).

• The use of other methods (*e.g.*, geophysical methods such as ground penetrating radar) to complement or supplant core drilling to determine site suitability for bank filtration credit.

• The number of GWUDI systems in each State (*i.e.*, the number of systems having at least one GWUDI source) where bank filtration has been utilized as the primary filtration barrier (*e.g.*, no other physical removal technologies follow); also, the method that was used by the State to determine that each

system was achieving 2 log removal of *Cryptosporidium*.

• For GWUDI systems where natural or alternative filtration (*e.g.* bank filtration or artificial recharge) is used in combination with a subsequent filtration barrier (*e.g.*, bag or cartridge filters) to meet the 2 log *Cryptosporidium* removal requirement of the IESWTR or LT1ESWTR, how much *Cryptosporidium* removal credit has the State awarded (or is the State willing to grant if the bags/cartridges were found to be achieving < 2.0 logs) for the natural or alternative filtration process and how did the State determine this value?

• The proposed *Cryptosporidium* removal credit and associated design criteria, including any additional information related to this topic.

• Suitable separation distance(s) to be required between vertical or horizontal wells and adjacent surface water.

• Testing protocols and procedures for making site specific determinations of the appropriate level of *Cryptosporidium* removal credit to award to bank filtration processes.

• Information on the data and methods suitable for predicting *Cryptosporidium* removal based on the available data from surrogate and indicator measurements in water collection devices.

• The applicability of turbidity monitoring or other process monitoring procedures to indicate the ongoing performance of bank filtration processes.

7. Lime Softening

a. *What is EPA proposing today?* Lime softening is a drinking water treatment process that uses precipitation with lime and other chemicals to reduce hardness and enhance clarification prior to filtration. Lime softening can be categorized into two general types: (1) Single-stage softening, which is used to remove calcium hardness and (2) two-stage softening, which is used to remove magnesium hardness and greater levels of calcium hardness. A single-stage softening plant includes a primary clarifier and filtration components. A two-stage softening plant also includes a secondary clarifier located between the primary clarifier and filter. In some two-stage softening plants, a portion of the flow bypasses the first clarifier.

EPA has determined that lime softening plants in compliance with IESWTR or LT1ESWTR achieve a level of *Cryptosporidium* removal equivalent to conventional treatment plants (*i.e.*, average of 3 log). Consequently, lime softening plants that are placed in Bins 2–4 as a result of *Cryptosporidium* monitoring incur the same additional treatment requirements as conventional plants. However, EPA is proposing that two-stage softening plants be eligible for an additional 0.5 log *Cryptosporidium* treatment credit. To receive the 0.5 log credit, the plant must have a second clarification stage between the primary clarifier and filter that is operated continuously, and both clarification stages must treat 100% of the plant flow. In addition, a coagulant must be present in both clarifiers (may include metal salts, polymers, lime, or magnesium precipitation).

b. *How was this proposal developed?* The lime softening process is used to remove hardness, primarily calcium and magnesium, through chemical precipitation followed by sedimentation and filtration. The addition of lime increases pH, causing the metal ions to precipitate. Other contaminants can coalesce with the precipitates and be removed in the subsequent settling and filtration processes. While elevated pH has been shown to inactivate some microorganisms like viruses (Battigelli and Sobsey, 1993, Logsdon *et al.* 1994), current research indicates that *Cryptosporidium* and Giardia are not inactivated by high pH (Logsdon *et al.* 1994, Li *et al.* 2001). A two-stage lime softening plant has the potential for additional *Cryptosporidium* removal because of the additional sedimentation process.

Limited data are available on the removal of *Cryptosporidium* by the lime softening treatment process. EPA has evaluated data from a study by Logsdon *et al.* (1994), which investigated removal of Giardia and *Cryptosporidium* in full scale lime softening plants. In addition, the Agency has considered data provided by utilities on the removal of aerobic spores in softening plants. These data are summarized in the following paragraphs.

Logsdon *et al.* (1994) measured levels of *Cryptosporidium* and Giardia in the raw, settled, and filtered water of 13 surface water plants using lime softening. *Cryptosporidium* was detected in the raw water at 5 utilities: one single-stage plant and four two-stage plants. Using measured oocyst levels, *Cryptosporidium* removal by sedimentation was 1.0 log in the single-stage plant and 1.1 to 2.3 log in the two-stage plants. *Cryptosporidium* was found in two filtered water samples of the single stage plant, leading to calculated removals from raw to filtered water of 0.6 and 2.2 log. None of the two-stage plants had *Cryptosporidium* detected in the filtered water. Based on detection limits, calculated *Cryptosporidium* removals from raw to filtered water in the two-stage plants ranged from >2.67 to >3.85 log.

Giardia removal across sedimentation was >0.9 log for a single-stage plant and ranged from 0.8 to 3.2 log for two-stage plants, based on measured cyst levels. Removal of Giardia from raw water through filtration was calculated using detection limits as >1.5 log in a single-stage plant and ranged from >0.9 to >3.3 log in two-stage plants.

While results from the Logsdon *et al.* study are constrained by sample number and method detection limits, they suggest that two-stage softening plants may achieve greater removal of *Cryptosporidium* than single-stage plants. The authors concluded that two stages of sedimentation, each preceded by effective flocculation of particulate matter, may increase removal of protozoa. Additionally, the authors stated that consistent achievement of flocculation that results in effective settling in each sedimentation basin is the key factor in this treatment process.

Removal of Aerobic Spores by Softening Plants

Additional information on the microbial removal efficiency of the lime softening process comes from data provided by softening plants on removal of aerobic spores. While few treatment plants have sufficient concentrations of oocysts to directly calculate a *Cryptosporidium* removal efficiency, some plants have high concentrations of aerobic spores in the raw water. Spores may serve as an indicator of *Cryptosporidium* removal by sedimentation and filtration (Dugan *et al.* 2001).

The following two-stage softening plants provided data on removal of aerobic spores: St. Louis, MO, Kansas City, MO, and Columbus, OH (2 plants). *Cryptosporidium* data were also collected at these utilities, but it was not possible to calculate oocyst removal due to low raw water detection rates. Data on removal of aerobic spores by these softening plants is summarized in Table IV–14.

TABLE IV–14.—SUMMARY OF AEROBIC SPORE REMOVAL DATA FROM SOFTENING PLANTS

Plant	Mean log removal of aerobic spores		
	Primary clarifier	Secondary clarifier	Across plant *
St. Louis	1.7	1.1	3.8
Kansas City	2.4	0	3.4
Columbus Plant 1	1.2	1.6	3.1
Columbus Plant 2	1.3	2.4	4.2

* Excludes removal in pre-sedimentation basins; calculated spore removal may underestimate actual removal due to filter effluent levels below quantitation limits.

The City of St. Louis Water Division operates a two-stage lime softening process preceded by presedimentation. Ferric sulfate and polymer coagulants are added at various points in the process. St. Louis collected Bacillus subtilis spore samples between June 1998 and September 2000. During this time period, the mean spore concentration entering the softening process (*i.e.,* after presedimentation) was 8,132 cfu/100 mL. The log removal values shown in Table IV–14 are based on average spore concentrations following primary clarification, secondary clarification, and filtration. However, spore levels in some filtered water samples were below the method detection limit, so that the true mean spore removal across the plant may have been higher than indicated by the calculated value.

The Kansas City Water Services Department plant includes two-stage lime softening with pre-sedimentation and sludge recycle. Bacillus subtilis spore data were collected from this plant during January through November 2000. The mean spore concentration entering the lime softening process (after presedimentation) was 5,965 cfu/100 mL. Mean spore levels following primary clarification, secondary clarification, and filtration were 21.1, 25.7, and 2.6 cfu/100 mL, respectively. Corresponding log removal values are shown in Table IV–14. Note that the average spore concentration in the effluent of the secondary clarifier was essentially equivalent to the effluent of the primary clarifier, indicating that little removal occurred in the secondary clarifier. This result may have been due to the high removal achieved in the primary clarifier and, consequently, the relatively low concentration of spores entering the second clarifier. As with the St. Louis plant, many of the filtered water observations were below method detection limits, so actual log removal across the plant may have been higher than the calculated value.

The City of Columbus operates two lime softening plants, each of which has two clarification stages. Coagulant is added prior to the first clarification stage but lime is not added until the second clarifier (*i.e.,* first clarifier is not a softening stage). Between 1997 and 2000, samples for total aerobic spores were collected approximately monthly at each plant from raw water, following each clarification basin, and after filtration. Mean spore concentrations in the raw water sources for the two plants were 10,619 cfu/100 mL (Plant 1) and 22,595 cfu/100 mL (Plant 2). Mean log removals occurring in the two clarification stages and across the plant are shown for each plant in Table IV–14.

These data indicate that two-stage softening plants can remove high levels of *Cryptosporidium*, and, in particular, that a second clarification stage can achieve 0.5 log or greater removal. Three of the four plants that provided data on removal of aerobic spores achieved greater than 1 log reduction in the second clarifier. Kansas City, the one plant which achieved little removal in the second clarifier, achieved a mean 2.4 log removal in the primary clarifier. This was approximately 1 log more reduction than achieved in the primary clarifiers of the other three plants, so that the spore concentration entering the second clarifier in Kansas City may have been too low to serve as an indicator of removal efficiency. Consequently, EPA has concluded that these data support an additional *Cryptosporidium* treatment credit of 0.5 log for a two-stage softening plant.

EPA is proposing as a condition of the 0.5 log additional credit that a coagulant, which could include excess lime and soda ash or precipitation of magnesium hydroxide, be present in both clarifiers. This requirement is necessary to ensure that significant particulate removal occurs in both clarification stages. Logsdon *et al.* (1994) identified effective flocculation as being a key factor for removal of protozoa in softening plants. Among the softening plants that provided data on aerobic spore removal, St. Louis added ferric and polymer coagulants at different points in the process, and the two Columbus plants added lime to the second clarifier. Consequently, a requirement that plants add a coagulant, which may be lime, in the secondary clarifier is consistent with the data used to support the 0.5 log additional credit.

The Science Advisory Board (SAB) reviewed the proposed *Cryptosporidium* treatment credit for lime softening and supporting information, as presented in the November 2001 pre-proposal draft of the LT2ESWTR (USEPA 2001g). In written comments from a December 2001 meeting of the Drinking Water Committee, the SAB panel concluded that both single- and two-stage softening generally outperform conventional treatment due to the heavy precipitation that occurs. Further, the panel found that 0.5 log of additional *Cryptosporidium* removal is an average value for a two-stage lime softening plant. However, the SAB stated that the additional credit for two-stage softening should be given only if all the water passes through both stages. Today's proposal is consistent with these recommendations by the SAB.

EPA notes that by including a presumptive credit for softening plants, today's proposal differs from the Stage 2 M-DBP Agreement in Principle, which recommends up to 1 log additional *Cryptosporidium* treatment credit for softening plants based on demonstration of performance, but no additional presumptive credit.

c. *Request for comment.* EPA requests comment on the proposed criteria for awarding credit to lime softening plants. EPA would particularly appreciate comment on the following issues:

- Whether the information and analyses presented in this proposal supports an additional 0.5 log credit for two-stage softening, and the associated criteria necessary for credit.
- Additional information that either support or suggest modifications to the proposed criteria and credit.

8. Combined Filter Performance

a. *What is EPA proposing today?* This toolbox component will grant additional credit towards *Cryptosporidium*

treatment requirements to certain plants that maintain finished water turbidity at levels significantly lower than currently required. EPA is proposing to award an additional 0.5 log *Cryptosporidium* treatment credit to conventional and direct filtration plants that demonstrate a turbidity level in the combined filter effluent (CFE) less than or equal to 0.15 NTU in at least 95 percent of the measurements taken each month. Compliance with this criterion must be based on measurements of the CFE every four hours (or more frequently) that the system serves water to the public. This credit is not available to membrane, bag/cartridge, slow sand, or DE plants, due to the lack of documented correlation between effluent turbidity and *Cryptosporidium* removal in these processes.

b. *How was this proposal developed?* Turbidity is an optical property measured from the amount of light scattered by suspended particles in a solution. It is a method defined parameter that can detect the presence of a wide variety of particles in water (e.g., clay, silt, mineral particles, organic and inorganic matter, and microorganisms), but it cannot provide specific information on particle type, number, or size. Turbidity is used as an indicator of raw and finished water quality and treatment performance. Turbidity spikes in filtered water indicate a potential for breakthrough of pathogens.

Under the IESWTR and LT1ESWTR, combined filter effluent turbidity in conventional and direct filtration plants must be less than or equal to 0.3 NTU in 95% of samples taken each month and must never exceed 1 NTU. These plants are also required to conduct continuous monitoring of turbidity for each individual filter, and provide an exceptions report to the State when certain criteria for individual filter effluent turbidity are exceeded (described in 63 FR 69487, December 16, 1998) (USEPA 1998a).

The Stage 2 M–DBP Advisory Committee recommended that systems receive an additional 0.5 log *Cryptosporidium* removal credit for maintaining 95th percentile combined filter effluent turbidity below 0.15 NTU, which is one half of the current required level of 0.3 NTU. In considering the technical basis to support this recommendation, EPA has reviewed studies that evaluated the efficiency of granular media filtration in removing *Cryptosporidium* when operating at different effluent turbidity levels.

For the IESWTR, EPA estimated that plants would target filter effluent turbidity in the range of 0.2 NTU in order to ensure compliance with a turbidity standard of 0.3 NTU. Similarly, EPA has estimated that plants relying on meeting a turbidity standard of 0.15 NTU in 95% of samples will consistently operate below 0.1 NTU in order to ensure compliance. Consequently, to assess the impact of compliance with the lower finished water turbidity standard, EPA compared *Cryptosporidium* removal efficiency when effluent turbidity is below 0.1 NTU with removal efficiency when effluent turbidity is in the range of 0.1 to 0.2 NTU. Results from applicable studies are summarized in Table IV–15 and are discussed in the following paragraphs.

TABLE IV–15.—STUDIES OF *Cryptosporidium* REMOVAL AT DIFFERENT EFFLUENT TURBIDITY LEVELS

Microorganism	Average of log removals	Filtered effluent turbidity	Experiment design	Researcher
Cryptosporidium	4.39	≤0.1 NTU	Pilot-scale	Patania et al. (1995).
	3.55	>0.1 and ≤0.2 NTU		
Giardia	4.23	≤0.1 NTU		
	3.22	>0.1 and ≤0.2 NTU		
Cryptosporidium	4.09	≤0.1 NTU	Bench-scale	Emelko et al. (1999).
	3.58	>0.1 and ≤0.2 NTU		
Cryptosporidium	3.76	≤0.1 NTU	Pilot-scale	Dugan et al. (2001).
	2.56	>0.1 and ≤0.2 NTU		

Patania *et al.* (1995) conducted pilot-scale studies at four locations to evaluate the removal of seeded *Cryptosporidium* and Giardia, turbidity, and particles. Treatment processes, coagulants, and coagulant doses differed among the four locations. Samples of filter effluent were taken at times of stable operation and filter maturation. Analysis of summary data from the seeded runs at all locations shows that average *Cryptosporidium* removal was greater by more than 0.5 log when effluent turbidity was less than 0.1 NTU, in comparison to removal with effluent turbidity in the range 0.1 to 0.2 NTU (see Table IV–15).

Emelko *et al.* (1999) used a bench scale dual media filter to study *Cryptosporidium* removal during both optimal and challenged operating conditions. Water containing a suspension of kaolinite (clay) was spiked with oocysts, coagulated in-line with alum, and filtered. Oocyst removal was evaluated during stable operation when effluent turbidity was below 0.1 NTU. Removal was also measured after a hydraulic surge that caused process upset, and with coagulant addition terminated. These later two conditions resulted in effluent turbidities greater than 0.1 NTU and decreased removal of *Cryptosporidium*. As shown in Table IV–15, average removal of *Cryptosporidium* during periods with effluent turbidity below 0.1 NTU was approximately 0.5 log greater than when effluent turbidity was between 0.1 to 0.2 NTU.

Dugan *et al.* (2001) evaluated *Cryptosporidium* removal in a pilot scale conventional treatment plant. Sixteen filtration runs seeded with *Cryptosporidium* were conducted at different raw water turbidities and coagulation conditions. Eleven of the runs had an effluent turbidity below 0.1 NTU, and five runs had effluent turbidity between 0.1 and 0.2 NTU. For runs where the calculated *Cryptosporidium* removal was concentration limited (*i.e.*, effluent values were non-detect), the method detection limit was used to calculate the values shown in Table IV–15. Using this conservative estimate, average *Cryptosporidium* removal with effluent turbidity below 0.1 NTU exceeded by more than 1 log the average removal observed with effluent turbidity between 0.1 to 0.2 NTU.

In summary, these three studies all support today's proposal in showing that plants consistently operating below 0.1 NTU can achieve an additional 0.5 log or greater removal of *Cryptosporidium* than when operating between 0.1 and 0.2 NTU. Because EPA expects plants relying on compliance with a 0.15 NTU standard will consistently operate below 0.1 NTU, the

Agency has determined it is appropriate to propose an additional 0.5 log treatment credit for plants meeting this standard.

The SAB reviewed the proposed additional 0.5 log *Cryptosporidium* removal credit for systems maintaining very low CFE turbidity, as presented in the November 2001 pre-proposal draft of the LT2ESWTR (USEPA 2001g). The SAB also reviewed a potential additional 1.0 log *Cryptosporidium* removal credit for systems achieving very low individual filter effluent (IFE) turbidity, which is addressed in section IV.C.16 of today's proposal.

In written comments from a December 2001 meeting of the Drinking Water Committee, the SAB panel stated that additional credit for lower finished water turbidity is consistent with what is known in both pilot and full-scale operational experiences for *Cryptosporidium* removal. Recognizing that IESWTR requirements for lowering turbidity in the treated water will result in lower concentrations of *Cryptosporidium*, the panel affirmed that even further lowering of turbidity will result in further reductions in *Cryptosporidium* in the filter effluent. However, the SAB concluded that limited data were presented to show the exact removal that can be achieved, and recommended that no additional credit be given to plants that demonstrate CFE turbidity of 0.15 NTU or less. The SAB recommended that 0.5 log credit be given to plants achieving IFE turbidity in each filter less than 0.15 NTU in 95% of samples each month.

In responding to this recommendation from the SAB, EPA acknowledges the difficulty in precisely quantifying *Cryptosporidium* removal through filtration based on effluent turbidity levels. Nevertheless, EPA finds that available data consistently show that removal of *Cryptosporidium* is increased by 0.5 log or greater when filter effluent turbidity is reduced to levels reflecting compliance with a 0.15 NTU standard, in comparison to compliance with a 0.3 NTU standard. Consequently, EPA has concluded that it is appropriate to propose this 0.5 log presumptive treatment credit for systems achieving very low CFE turbidity.

Measurement of Low Level Turbidity

Another important aspect of proposing to award additional removal credit for lower finished water turbidity is the performance of turbidimeters in measuring turbidity below 0.3 NTU. The following paragraphs summarize results from several studies that evaluated low level measurement of turbidity by different on-line and bench top instruments. Note that because compliance with the CFE turbidity limit is based on 4-hour readings, either on-line or bench top turbidimeters may be used. EPA believes that results from these studies indicate that currently available turbidity monitoring equipment is capable of reliably assessing turbidity at levels below 0.1 NTU, provided instruments are well calibrated and maintained.

The 1997 NODA for the IESWTR (67 FR 59502, Nov. 3, 1997) (USEPA 1997a) discusses issues relating to the accuracy and precision of low level turbidity measurements. This document cites studies (Hart *et al.* 1992, Sethi *et al.* 1997) suggesting that large tolerances in instrument design criteria have led to turbidimeters that provide different turbidity readings for a given suspension.

At the time of IESWTR NODA, EPA had conducted performance evaluation (PE) studies of turbidity samples above 0.3 NTU. A subsequent PE study (USEPA 1998e), labeled WS041, was carried out to address concern among the Stage 1 M–DBP Federal Advisory Committee regarding the ability to reliably measure lower turbidity levels. The study involved distribution of different types of laboratory prepared standard solutions with reported turbidity values of 0.150 NTU or 0.160 NTU. The results of this study are summarized in Table IV–16.

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Table IV-16.-- Performance Evaluation - WS041 Data for Low Level Turbidity Analysis (USEPA 1998e)

Type of Instrument	Sample Solution Type	"True" Value (NTU)	No. of Results Available	Mean* (NTU)	Std. Dev* (NTU)	95% Prediction Interval (NTU)
Bench Top	Polystyrene Spheres	0.150	292	0.203	0.0558	0.093-0.313
Portable or IR	Polystyrene Spheres	0.150	340	0.200	0.0439	0.113–0.286
Portable or IR	Formazin	0.160	335	0.176	0.0431	0.091-0.261
On-Line	Polystyrene Spheres	0.150	52	0.228	0.0773	0.072-0.385

*Calculated using biweight transformation

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The data summarized in Table IV–16 indicate a positive bias for all instruments when compared against a reported "true value." On-line instruments in this study had a larger positive bias and higher standard deviation (RSD approximately 50 percent). The positive bias is consistent with previous PE studies (USEPA 1998e) and suggests that error in turbidimeter readings may be generally conservative (*i.e.,* systems will operate

at lower than required effluent turbidity levels).

Letterman *et al.* (2001) evaluated the effect of turbidimeter design and calibration methods on *inter*-instrument performance, comparing bench top to on-line instruments and instruments within each of those categories from different manufacturers. The study used treated water collected from the filter effluent of water treatment plants. Reported sample turbidity values ranged from 0.05 to 1 NTU. Samples were analyzed in a laboratory environment. The results are consistent with those of the WS041 study, specifically the positive bias of on-line instruments. However, Letterman *et al.* found generally poor agreement among different on-line instruments and between bench-top and on-line instruments. The authors also observed that results were independent of the calibration method, though certain experiments suggested that analyst experience may have some effect on turbidity readings from bench-top instruments.

Sadar (1999) conducted an *intra*-instrument study of low level turbidity measurements among instruments from the same manufacturer. This study was performed under well-controlled laboratory conditions. *Intra*-instrument variation among different models and between bench top and on-line instruments occurred but at significantly lower levels than the Letterman *et al. inter*-instrument study. Newer instruments also tended to read lower than older instruments, which the author attributed to a reduction in stray light and lower sensitivities in the newer instruments. Sadar also found a generally positive bias when comparing on-line to bench-top and when comparing all instruments to a prepared standard.

The American Society for Testing and Materials (ASTM) has issued standard test methods for measurement of turbidity below 5 NTU by on-line (ASTM 2001) and static (ASTM 2003) instrument modes. The methods specify that the instrument should permit detection of turbidity differences of 0.01 NTU or less in waters having turbidities of less than 1.00 NTU (ASTM 2001) and 5.0 NTU (ASTM 2003), respectively. *Inter*-laboratory study data included with the method for a known turbidity standard of 0.122 NTU show an analyst relative deviation of 7.5% and a laboratory relative deviation of 16% (ASTM 2003).

In summary, the data collected in these studies of turbidity measurement indicate that currently available monitoring equipment can reliably measure turbidity at levels of 0.1 NTU and lower. However, this requires rigorous calibration and verification procedures, as well as diligent maintenance of turbidity monitoring equipment (Burlingame 1998, Sadar 1999). Systems that pursue additional treatment credit for lower finished water turbidity must develop the procedures necessary to ensure accurate and reliable measurement of turbidity at levels of 0.1 NTU and less. EPA guidance for the microbial toolbox will provide direction to water systems on developing these procedures.

c. *Request for comment.* EPA invites comment on the following issues regarding the proposed *Cryptosporidium* treatment credit for combined filter performance:

- Do the studies cited here support awarding 0.5 log credit for CFE ≤ 0.15 NTU 95% of the time?
- Does currently available turbidity monitoring technology accurately distinguish differences between values measured near 0.15 NTU?

9. Roughing Filter

a. *What is EPA proposing today?* The Stage 2 M–DBP Agreement in Principle recommends a 0.5 log presumptive credit towards additional *Cryptosporidium* treatment requirements for roughing filters. However, the Agreement further specifies that EPA is to determine the design and implementation criteria under which the credit would be awarded. Upon subsequent review of available literature, EPA is unable to identify design and implementation conditions for roughing filters that would provide reasonable assurance of achieving a 0.5 log removal of oocysts. Consequently, EPA is not proposing presumptive credit for *Cryptosporidium* removal by roughing filters. Today's proposal does, though, include a 0.5 log credit for a second granular media filter following coagulation and primary filtration (see section IV.C.13).

b. *How was this proposal developed?* Roughing filtration is a technique used primarily in developing countries to remove solids from high turbidity source waters prior to treatment with slow sand filters. Typically, roughing filters consist of a series of sedimentation tanks filled with progressively smaller diameter media in the direction of flow. The media can be gravel, plastic, crushed coconut, rice husks, or a similar locally available material. The flow direction in roughing filters can be either horizontal or vertical, and vertical roughing filters can be either upflow or downflow. The media in the tanks effectively reduce the vertical settling distance of particles to a distance of a few millimeters. As sediment builds on the media, it eventually sloughs off and begins to accumulate in the lower section of the filter, while simultaneously regenerating the upper portions of the filter. The filters require periodic cleaning to remove the collected silt.

Review of the scientific and technical literature pertaining to roughing filters has identified no information on removal of *Cryptosporidium*. Information is available on removal of suspended solids, turbidity, particles, fecal coliforms and some algae, but none of these has been demonstrated to be an indicator of *Cryptosporidium* removal by roughing filters. Moreover, roughing filters are not preceded by a coagulation step, and studies have found that some potential surrogates, such as aerobic spores, are not conservative indicators of *Cryptosporidium* removal by filtration when a coagulant is not present (Yates *et al.* 1998, Dugan *et al.* 2001). Thus, it is unclear how to relate results from studies of the removal of other particles by roughing filters to potential removal of *Cryptosporidium*.

In addition, some studies have observed very poor removal of *Cryptosporidium* by rapid sand filters when a coagulant is not used (Patania *et al.* 1995, Huck *et al.* 2000). Based on these findings, it is expected that there would be situations where a roughing filter would not achieve 0.5 log *Cryptosporidium* removal. Because available data are insufficient to determine the conditions that would be necessary for a roughing filter to achieve 0.5 log *Cryptosporidium* removal, EPA is unable to propose this credit. The following discussion describes four studies that analyzed the effectiveness of roughing filters for removing solids, turbidity, particles, fecal coliforms, and algae.

Wegelin *et al.* (1987) conducted pilot-scale studies on the use of horizontal roughing filters to reduce solids, turbidity, and particles. Testing was performed to determine the influence of different design parameters on filter performance. Data from the parameter testing was used to establish an empirical model to simulate filtrate quality as a function of filter length and time for a given filter configuration. Using the mathematical model, the researchers found that long filters (10 m) at low filtration rates (0.5 m/h) were capable of reducing high suspended solids concentrations (1000 mg/L TSS) down to less than 3 mg/L.

Further work by Wegelin (1988) evaluated roughing filters as pretreatment for slow sand filters for

waters with variable and seasonably high suspended solids concentrations. This study collected data on roughing filters in Peru, Colombia, Sudan, and Ghana. Table IV–17 summarizes data for three of the roughing filters. These filters were capable of reducing peak turbidities by 80 to 90 percent. Further, the Peruvian and Colombian filters reduced fecal coliforms by 77 and 89 percent, respectively. The Sudanese filter may have removed around 90 percent of the fecal coliforms, but specific values were not given. Data collected from roughing filters in Ghana on algae removal indicate that the Merismopedia (0.5 μm) and Chlorophyta (2–10 μm), which are comparable in size to *Cryptosporidium* oocysts, were completely removed from the water in mature filters, and that some removal of Chlorophyta, but not Merismopedia, occurred in filters after three days of operation. However, the removal of these organisms has not been correlated with *Cryptosporidium* oocyst removal.

TABLE IV–17.—ROUGHING FILTER DATA FROM WEGELIN, 1988

Location	Azpita, Peru	El Retiro, Colombia	Blue Nile Health Project, Sudan
Roughing Filter Type	Downflow	Upflow (multi-layer filter)	Horizontal-flow.
Filtration Rate	0.30 m/h (0.98 ft/hr)	0.74 m/h (2.43 f/hr)	0.3 m/h (0.98 ft/hr).
Design Capacity	35 m^3/d	790 m^3/d	5 m^3/d.
Turbidity (NTU)			
Raw Water	50–200	10–150	40–500
Roughing Filter Effluent	15–40	5–15	5–50
Fecal Coliforms (/100 mL)			
Raw Water	700	16,000	>300
Roughing Filter Effluent	160	1,680	<25

oller (1993) details the mechanisms of particle removal that occur in roughing filters. The conclusions are similar to those drawn by Wegelin *et al.* (1987). Particle analysis reviewed by Boller indicates that after seven days of operation, the four stage pilot filter utilized by Wegelin *et al.* (1987) removed more than 98 percent of particles sized 1.1 μm, and greater than 99 percent of particles sized 3.6 μm. After 62 days, only 80 percent of particles sized 1.1 μm were removed, while 90 percent of particles sized 3.6 μm were removed. Boller did not give the solids loading on the tested filter, and particle removal was not correlated to *Cryptosporidium* oocyst removal.

Collins *et al.* (1994) investigated solids and algae removal with pilot scale vertical downflow roughing filters. Gravel media size, filter depth, and flow rate were varied to determine which design variables had the greatest effect on filter performance. Results indicated that the most influential design parameters for removing solids from water, in order of importance, were filter length, gravel size, and hydraulic flow rate. For algae removal, the most influential design parameters were hydraulic flow rate, filter length, and gravel size. Solids removal was better in filters that had been ripened with algae for 5–7 days. However, extrapolation of these results to *Cryptosporidium* removal could not be made.

c. *Request for comment.* The Agency requests comment on the information that has been presented about roughing filters, and specifically the question of whether and under what conditions roughing filters should be awarded a 0.5 log credit for removal of *Cryptosporidium*. EPA also requests information on specific studies of *Cryptosporidium* oocyst removal by roughing filters, or from studies of the removal of surrogate parameters that have been shown to correlate with oocyst removal in roughing filters.

10. Slow Sand Filtration

a. *What is EPA proposing today?* Slow sand filtration is defined in 40 CFR 141.2 as a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms. Today's proposal allows systems using slow sand filtration as a secondary filtration step following a primary filtration process (*e.g.*, conventional treatment) to receive an additional 2.5 log *Cryptosporidium* treatment credit. There must be no disinfectant residual in the influent water to the slow sand filtration process to be eligible for credit.

Note that this proposed credit differs from the credit proposed for slow sand filtration as a primary filtration process. EPA has concluded, based on treatment studies described in section III.D, that plants using well designed and well operated slow sand filtration as a primary filtration process can achieve an average *Cryptosporidium* removal of 3 log (Schuler and Ghosh, 1991, Timms *et al.* 1995, Hall *et al.* 1994). Consequently, as described in section IV.A, EPA is proposing that plants using slow sand filtration as a primary filtration process receive a 3 log credit towards *Cryptosporidium* treatment requirements associated with Bins 2–4 under the LT2ESWTR (*i.e.*, credit equivalent to a conventional treatment plant).

The proposed 2.5 log credit for slow sand filtration as part of the microbial toolbox applies only when it is used as a secondary filtration step, following a primary filtration process like conventional treatment. While the removal mechanisms that make slow sand filtration effective as a primary filtration process would also be operative when used as a secondary filtration step, EPA has little data on this specific application. The Agency is proposing 2.5 log credit for slow sand filtration as a secondary filtration step, in comparison to 3 log credit as a primary filtration process, as a conservative measure reflecting greater uncertainty. In addition, the proposed 2.5 log credit for slow sand filtration as part of the microbial toolbox is consistent with the recommendation in the Stage 2 M–DBP Agreement in Principle.

b. *How was this proposal developed?* The Stage 2 M–DBP Agreement in Principle recommends that slow sand filtration receive 2.5 log or greater *Cryptosporidium* treatment credit when used in addition to existing treatment that achieves compliance with the

IESWTR or LT1ESWTR. Slow sand filtration is not typically used as a secondary filtration step following conventional treatment or other primary filtration processes of similar efficacy. However, EPA expects that slow sand filtration would achieve significant removal of *Cryptosporidium* in such a treatment train.

While there is a significant body of data demonstrating the effectiveness of slow sand filtration for *Cryptosporidium* removal as a primary filtration process, as described in section III.D, EPA has limited data on the effectiveness of slow sand filtration when used as a secondary filtration step. Hall *et al.* (1994) evaluated oocyst removal for a pilot scale slow sand filter following a primary filtration process identified as a rapid gravity filter. The combined treatment train of a primary filtration process followed by slow sand filtration achieved greater than 3 log *Cryptosporidium* removal in three of five experimental runs, while approximately 2.5 log reduction was observed in the other two runs. In comparison, Hall *et al.* (1994) reported slow sand filtration alone to achieve at least a 3 log removal of oocysts in each of four experimental runs when not preceded by a primary filtration process. The authors offered no explanation for these results, but measured oocyst removals may have been impacted by limitations with the analytical method.

Removal of microbial pathogens in slow sand filters is complex and is believed to occur through a combination of physical, chemical, and biological mechanisms, both on the surface (schmutzdecke) and in the interior of the filter bed. It is unknown if the higher quality of the water that would be influent to a slow sand filter when used as a secondary filtration step would impact the efficiency of the filter in removing *Cryptosporidium*. Based on the limited data on the performance of slow sand filtration as a secondary filtration step, and in consideration of the recommendation of the Advisory Committee, EPA is proposing only a 2.5 log additional *Cryptosporidium* treatment credit for this application.

c. *Request for comment.* The Agency requests comment on whether the available data are adequate to support awarding a 2.5 log *Cryptosporidium* removal credit for slow sand filtration applied as a secondary filtration step, along with any additional information related to this application.

11. Membrane Filtration

a. *What is EPA proposing today?* EPA is proposing criteria for awarding credit to membrane filtration processes for removal of *Cryptosporidium*. To receive removal credit, the membrane filtration process must: (1) Meet the basic definition of a membrane filtration process, (2) have removal efficiency established through challenge testing and verified by direct integrity testing, and (3) undergo periodic direct integrity testing and continuous indirect integrity monitoring during use. The maximum removal credit that a membrane filtration process is eligible to receive is equal to the lower value of either:

—The removal efficiency demonstrated during challenge testing OR

—The maximum log removal value that can be verified through the direct integrity test (*i.e.*, integrity test sensitivity) used to monitor the membrane filtration process.

By the criteria in today's proposal, a membrane filtration process could potentially meet the Bin 4 *Cryptosporidium* treatment requirements of this proposal. These criteria are described in more detail below. EPA is developing a Membrane Filtration Guidance Manual that provides additional information and procedures for meeting these criteria (USEPA 2003e). A draft of this guidance is available in the docket for today's proposal (*http://www.epa.gov/edocket/*).

Definition of a Membrane Filtration Process

For the purpose of this proposed rule, membrane filtration is defined as a pressure or vacuum driven separation process in which particulate matter larger than 1 μm is rejected by a nonfibrous, engineered barrier, primarily through a size exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition is intended to include the common membrane technology classifications: microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO). MF and UF are low-pressure membrane filtration processes that are primarily used to remove particulate matter and microbial contaminants. NF and RO are membrane separation processes that are primarily used to remove dissolved contaminants through a variety of mechanisms, but which also remove particulate matter via a size exclusion mechanism.

In today's proposal, the critical distinction between membrane filtration processes and bag and cartridge filters, described in section IV.C.12, is that the integrity of membrane filtration processes can be directly tested. Based on this distinction, EPA is proposing that membrane material configured into a cartridge filtration device that meets the definition of membrane filtration and that can be direct integrity tested according to the criteria specified in this section is eligible for the same removal credit as a membrane filtration process.

Membrane devices can be designed in a variety of configurations including hollow-fiber modules, hollow-fiber cassettes, spiral-wound elements, cartridge filter elements, plate and frame modules, and tubular modules among others. In today's proposal, the generic term module is used to refer to all of these various configurations and is defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure. A membrane unit is defined as a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

Challenge Testing

A challenge test is defined as a study conducted to determine the removal efficiency (*i.e.*, log removal value) of the membrane filtration media. The removal efficiency demonstrated during challenge testing establishes the maximum removal credit that a membrane filtration process is eligible to receive, provided this value is less than or equal to the maximum log removal value that can be verified by the direct integrity test (as described in the following subsection). Challenge testing is a product specific rather than a site specific requirement. At the discretion of the State, data from challenge studies conducted prior to promulgation of this regulation may be considered in lieu of additional testing. However, the prior testing must have been conducted in a manner that demonstrates a removal efficiency for *Cryptosporidium* commensurate with the treatment credit awarded to the process. Guidance for conducting challenge testing to meet the requirements of the rule is provided in the Membrane Filtration Guidance Manual (USEPA 2003e). Challenge testing must be conducted according to the following criteria:

• Challenge testing must be conducted on a full-scale membrane module identical in material and construction to the membrane modules proposed for use in full-scale treatment facilities. Alternatively, challenge testing may be conducted on a smaller membrane module, identical in material and similar in construction to the full-

scale module, if testing meets the other requirements listed in this section.

• Challenge testing must be conducted using *Cryptosporidium* oocysts or a surrogate that has been determined to be removed no more efficiently than *Cryptosporidium* oocysts. The organism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test. Thus, gross water quality measurements such as turbidity or conductivity cannot be used.

• The maximum allowable feed water concentration used during a challenge test is based on the detection limit of the challenge particulate in the filtrate, and is determined according to the following equation:

$$\text{Maximum Feed Concentration} = 3.16 \times 10^6 \times (\text{Filtrate Detection Limit})$$

This will allow the demonstration of up to 6.5 log removal during challenge testing if the challenge particulate is removed to the detection limit.

• Challenge testing must be conducted under representative hydraulic conditions at the maximum design flux and maximum design system recovery as specified by the manufacturer. Flux is defined as the flow per unit of membrane area. Recovery is defined as the ratio of filtrate volume produced by a membrane to feed water volume applied to a membrane over the course of an uninterrupted operating cycle. An operating cycle is bounded by two consecutive backwash or cleaning events. In the context of this rule, recovery does not consider losses that occur due to the use of filtrate in backwashing or cleaning operations.

• Removal efficiency of a membrane filtration process is determined from the results of the challenge test, and expressed in terms of log removal values as defined by the following equation:

$$LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$$

where LRV = log removal value demonstrated during challenge testing; C_f = the feed concentration used during the challenge test; and C_p = the filtrate concentration observed during the challenge test. For this equation to be valid, equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term C_p is set equal to the detection limit. A single LRV is calculated for each membrane module evaluated during the test.

• The removal efficiency of a membrane filtration process demonstrated during challenge testing is expressed as a log removal value (LRV_{C-Test}). If fewer than twenty modules are tested, then LRV_{C-Test} is assigned a value equal to the lowest of the representative LRVs among the various modules tested. If twenty or more modules are tested, then LRV_{C-Test} is assigned a value equal to the 10th percentile of the representative LRVs among the various modules tested. The percentile is defined by [i/(n+1)] where i is the rank of n individual data points ordered lowest to highest. It may be necessary to calculate the 10th percentile using linear interpolation.

• A quality control release value (QCRV) must be established for a non-destructive performance test (*e.g.*, bubble point test, diffusive airflow test, pressure/vacuum decay test) that demonstrates the *Cryptosporidium* removal capability of the membrane module. The performance test must be applied to each production membrane module that did not undergo a challenge test in order to verify *Cryptosporidium* removal capability. Production membrane modules that do not meet the established QCRV are not eligible for the removal credit demonstrated during challenge testing.

• Any significant modification to the membrane filtration device (*e.g.*, change in the polymer chemistry of the membrane) requires additional challenge testing to demonstrate removal efficiency of the modified module and to define a new QCRV for the nondestructive performance test.

Direct Integrity Testing

In order to receive removal credit for *Cryptosporidium*, the removal efficiency of a membrane filtration process must be routinely verified through direct integrity testing. A direct integrity test is defined as a physical test applied to a membrane unit in order to identify and isolate integrity breaches. An integrity breach is defined as one or more leaks that could result in contamination of the filtrate. The direct integrity test method must be applied to the physical elements of the entire membrane unit including membranes, seals, potting material, associated valving and piping, and all other components which under compromised conditions could result in contamination of the filtrate.

The direct integrity tests commonly used at the time of this proposal include those that use an applied pressure or vacuum (such as the pressure decay test and diffusive airflow test), and those that measure the rejection of a particulate or molecular marker (such as spiked particle monitoring). Today's proposal does not stipulate the use of a particular direct integrity test. Instead, the direct integrity test must meet performance criteria for resolution, sensitivity, and frequency.

Resolution is defined as the smallest leak that contributes to the response from a direct integrity test. Any direct integrity test applied to meet the requirements of this proposed rule must have a resolution of 3 μm or less. The manner in which the resolution criterion is met will depend on the type of direct integrity test used. For example, a pressure decay test can meet the resolution criterion by applying a net test pressure great enough to overcome the bubble point of a 3 μm hole. A direct integrity test that uses a particulate or molecular marker can meet the resolution criterion by applying a marker of 3 μm or smaller.

Sensitivity is defined as the maximum log removal value that can be reliably verified by the direct integrity test (LRV_{DIT}). The sensitivity of the direct integrity test applied to meet the requirements of this proposed rule must be equal to or greater than the removal credit awarded to the membrane filtration process. The manner in which LRV_{DIT} is determined will depend on the type of direct integrity test used. Direct integrity tests that use an applied pressure or vacuum typically measure the rate of pressure/vacuum decay or the flow of air through an integrity breach. The response from this type of integrity test can be related to the flow of water through an integrity breach (Q_{breach}) during normal operation, using procedures such as those described in the Membrane Filtration Guidance Manual (USEPA 2003e). Once Q_{breach} has been determined, a simple dilution model is used to calculate LRV_{DIT} for the specific integrity test application, as shown by the following equation:

$$LRV_{DIT} = LOG_{10}(Q_p/(VCF \times Q_{breach}))$$

where LRV_{DIT} = maximum log removal value that can be verified by a direct integrity test; Q_p = total design filtrate flow from the membrane unit; Q_{breach} = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured; and VCF = volumetric concentration factor.

The volumetric concentration factor is the ratio of the suspended solids concentration on the high pressure side of the membrane relative to the feed water, and is defined by the following equation:

$$VCF = C_m/C_f$$

where C_m is the concentration of particulate matter on the high pressure

side of the membrane that remains in suspension; and C_f is the concentration of suspended particulate matter in the feed water. The magnitude of the concentration factor depends on the mode of system operation and typically ranges from 1 to 20. The Membrane Filtration Guidance Manual presents approaches for determining the volumetric concentration factor for different operating modes (USEPA 2003e).

Sensitivity of direct integrity tests that use a particulate or molecular marker is determined from the feed and filtrate concentrations of the marker. The LRV_{DIT} for this type of direct integrity test is calculated according to the following equation:

$$LRV_{DIT} = LOG_{10}(C_f) - LOG_{10}(C_p)$$

where LRV_{DIT} = maximum log removal value that can be verified by a direct integrity test; C_f = the typical feed concentration of the marker used in the test; and C_p = the filtrate concentration of the marker from an integral membrane unit. For this equation to be valid, equivalent units must be used for the feed and filtrate concentrations. An ideal particulate or molecular marker would be completely removed by an integral membrane unit.

If the sensitivity of the direct integrity test is such that LRV_{DIT} is less than $LRV_{C\text{-}Test}$, LRV_{DIT} establishes the maximum removal credit that a membrane filtration process is eligible to receive. Conversely, if LRV_{DIT} for a direct integrity test is greater than $LRV_{C\text{-}Test}$, $LRV_{C\text{-}Test}$ establishes the maximum removal credit.

A control limit is defined as an integrity test response which, if exceeded, indicates a potential problem with the system and triggers a response. Under this proposal, a control limit for a direct integrity test must be established that is indicative of an integral membrane unit capable of meeting the *Cryptosporidium* removal credit awarded by the State. If the control limit for the direct integrity test is exceeded, the membrane unit must be taken off-line for diagnostic testing and repair. The membrane unit could only be returned to service after the repair has been completed and confirmed through the application of a direct integrity test.

The frequency of direct integrity testing specifies how often the test is performed over an established time interval. Most direct integrity tests available at the time of this proposal are applied periodically and must be conducted on each membrane unit at a frequency of not less than once every 24 hours while the unit is in operation. If continuous direct integrity test methods become available that also meet the sensitivity and resolution criteria described earlier, they may be used in lieu of periodic testing.

EPA is proposing that at a minimum, a monthly report must be submitted to the State summarizing all direct integrity test results above the control limit associated with the *Cryptosporidium* removal credit awarded to the process and the corrective action that was taken in each case.

Continuous Indirect Integrity Monitoring

The majority of currently available direct integrity test methods are applied periodically since the membrane unit must be taken out of service to conduct the test. In order to provide some measure of process performance between direct integrity testing events, continuous indirect integrity monitoring is required. Indirect integrity monitoring is defined as monitoring some aspect of filtrate water quality that is indicative of the removal of particulate matter. If a continuous direct integrity test is implemented that meets the resolution and sensitivity criteria described previously, continuous indirect integrity monitoring is not required. Continuous indirect integrity monitoring must be conducted according to the following criteria:

- Unless the State approves an alternative parameter, continuous indirect integrity monitoring must include continuous filtrate turbidity monitoring.
- Continuous monitoring is defined as monitoring conducted at a frequency of no less than once every 15 minutes.
- Continuous monitoring must be separately conducted on each membrane unit.
- If indirect integrity monitoring includes turbidity and if the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (*i.e.*, two consecutive 15-minute readings above 0.15 NTU), direct integrity testing must be performed on the associated membrane units.
- If indirect integrity monitoring includes a State-approved alternative parameter and if the alternative parameter exceeds a State-approved control limit for a period greater than 15 minutes, direct integrity testing must be performed on the associated membrane units.
- EPA is proposing that at a minimum, a monthly report must be submitted to the primacy agency summarizing all indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

b. *How was this proposal developed?* The Stage 2 M–DBP Agreement in Principle recommends that EPA develop criteria to award *Cryptosporidium* removal credit to membrane filtration processes. Today's proposal and the supporting guidance are consistent with the Agreement.

A number of studies have been conducted which have demonstrated the ability of membrane filtration processes to remove pathogens, including *Cryptosporidium*, to below detection levels. A literature review summarizing the results of several comprehensive studies was conducted by EPA and is presented in Low-Pressure Membrane Filtration for Pathogen Removal: Application, Implementation, and Regulatory Issues (USEPA 2001h). Many of these studies used *Cryptosporidium* seeding to demonstrate removal efficiencies as high as 7 log. The collective results from these studies demonstrate that an integral membrane module, *i.e.*, a membrane module without any leaks or defects, with an exclusion characteristic smaller than *Cryptosporidium*, is capable of removing this pathogen to below detection in the filtrate, independent of the feed concentration.

Some filtration devices have used membrane media in a cartridge filter configuration; however, few data are available documenting their ability to meet the requirements for membrane filtration described in section IV.C.11.a of this preamble. However, in one study reported by Dwyer *et al.* (2001), a membrane cartridge filter demonstrated *Cryptosporidium* removal efficiencies in excess of 6 log. This study illustrates the potentially high removal capabilities of membrane filtration media configured into a cartridge filtration device, thus providing a basis for awarding removal credits to these devices under the membrane filtration provision of the rule, assuming that the device meets the definition of a membrane filtration process as well as the direct integrity test requirements.

Today's proposal requires challenge testing of membrane filtration processes used to remove *Cryptosporidium*. As noted in section III.D, EPA believes this is necessary due to the proprietary nature of these systems and the lack of any uniform criteria for establishing the exclusion characteristic of a membrane. Challenge testing addresses the lack of a standard approach for characterizing membranes by requiring direct verification of removal efficiency. The proposed challenge testing is product-specific and not site-specific since the

intent of this testing is to demonstrate the removal capabilities of the membrane product rather than evaluate the feasibility of implementing membrane treatment at a specific plant.

Testing can be conducted using a full-scale module or a smaller module if the results from the small-scale module test can be related to full-scale module performance. Most challenge studies presented in the literature have used full-scale modules, which provide results that can be directly related to full-scale performance. However, use of smaller modules is considered feasible in the evaluation of removal efficiency, and a protocol for challenge testing using small-scale modules has been proposed (NSF, 2002a). Since the removal efficiency of an integral membrane is a direct function of the membrane material, it may be possible to use a small-scale module containing the same membrane fibers or sheets used in full-scale modules for this evaluation. However, it will be necessary to relate the results of the small-scale module test to the nondestructive performance test quality control release value that will be used to validate full-scale production modules.

Challenge testing with either *Cryptosporidium* oocysts or a surrogate is permitted. Challenge testing with *Cryptosporidium* clearly provides direct verification of removal efficiency for this pathogen; however, several studies have demonstrated that surrogates can provide an accurate or conservative measure of *Cryptosporidium* removal efficiency. Since removal of particulate matter larger than 1 μm by a membrane filtration process occurs primarily via a size exclusion mechanism, the shape and size distribution of the surrogate must be selected such that the surrogate is not removed to a greater extent than the target organism. Surrogates that have been successfully used in challenge studies include polystyrene microspheres and bacterial endospores. The bacterial endospore, Bacillus subtilis, has been used as a surrogate for *Cryptosporidium* oocysts during challenge studies evaluating pathogen removal by physical treatment processes, including membrane filtration (Rice *et al.* 1996, Fox *et al.* 1998, Trimboli *et al.* 1999, Owen et al, 1999). Studies evaluating cartridge filters have demonstrated that polystyrene microspheres can provide an accurate or conservative measure of removal efficiency (Long, 1983, Li *et al.* 1997). Furthermore, the National Sanitation Foundation (NSF) Environmental Technology Verification (ETV) protocol for verification testing for physical removal of microbiological and particulate contaminants specifies the use of polymeric microspheres of a known size distribution (NSF 2002b). Guidance on selection of an appropriate surrogate for establishing a removal efficiency for *Cryptosporidium* during challenge testing is presented in the Membrane Filtration Guidance Manual (USEPA 2003e).

The design of the proposed challenge studies is similar to the design of the seeding studies described in the literature cited earlier. Seeding studies are used to challenge the membrane module with pathogen levels orders of magnitude higher than those encountered in natural waters. However, elevated feed concentrations can lead to artificially high estimates of removal efficiency. To address this issue, the feed concentration applied to the membrane during challenge studies is capped at a level that will allow the demonstration of up to 6.5 log removal efficiency if the challenge particulate is removed to the detection level.

Because challenge testing with *Cryptosporidium* or a surrogate is not conducted on every membrane module, it is necessary to establish criteria for a non-destructive performance test that can be applied to all production membrane modules. Results from a non-destructive test, such as a bubble point test, that are correlated with the results of challenge testing can be used to establish a quality control release value (QCRV) that is indicative of the ability of a membrane filtration process to remove *Cryptosporidium*. The non-destructive test and QCRV can be used to verify the *Cryptosporidium* removal capability of modules that are not challenge tested. Most membrane manufacturers have already adapted some form of non-destructive testing for product quality control purposes and have established a quality control release value that is indicative of an acceptable product. It may be possible to apply these existing practices for the purpose of verifying the capability of a membrane filtration process to remove *Cryptosporidium*.

Challenge testing provides a means of demonstrating the removal efficiency of an integral membrane module; however, defects or leaks in the membrane or other system components can result in contamination of the filtrate unless they are identified, isolated, and repaired. In order to verify continued performance of a membrane system, today's proposal requires direct integrity testing of membrane filtration processes used to meet *Cryptosporidium* treatment requirements. Direct integrity testing is required because it is a test applied to the physical membrane module and, thus, a direct evaluation of integrity. Furthermore, direct integrity methods are the most sensitive integrity monitoring methods commonly used at the time of this proposal (Adham *et al.* 1995).

The most common direct integrity tests apply a pressure or a vacuum to one side of a fully wetted membrane and monitor either the pressure decay or the volume of displaced fluid over time. However, the proprietary nature of these systems makes it impractical to define a single direct integrity test methodology that is applicable to all existing and future membrane products. Therefore, performance criteria have been established for any direct integrity test methodology used to verify the removal efficiency of a membrane system. These performance criteria are resolution, sensitivity, and frequency.

As stated previously, the resolution of an integrity test refers to the smallest leak that contributes to the response from an integrity test. For example, in a pressure decay integrity test, resolution is the smallest leak that contributes to pressure loss during the test. Today's proposal specifies a resolution of 3 μm or less, which is based on the size of *Cryptosporidium* oocysts. This requirement ensures that a leak that could pass a *Cryptosporidium* oocyst would contribute to the response from an integrity test.

The sensitivity of an integrity test refers to the maximum log removal that can be reliably verified by the test. Again using the pressure decay integrity test as an example, the method sensitivity is a function of the smallest pressure loss that can be detected over a membrane unit. Today's proposal limits the log removal credit that a membrane filtration process is eligible to receive to the maximum log removal value that can be verified by a direct integrity test.

In order to serve as a useful process monitoring tool for assuring system integrity, it is necessary to establish a site-specific control limit for the integrity test that corresponds to the log removal awarded to the process. A general approach for establishing this control limit for some integrity test methods is presented in guidance; however, the utility will need to work with the membrane manufacturer and State to establish a site-specific control limit appropriate for the integrity test used and level of credit awarded. Excursions above this limit indicate a potential integrity breach and would trigger removal of the suspect unit from service followed by diagnostic testing and subsequent repair, as necessary.

Most direct integrity tests available at the time of this proposal must be applied periodically since it is necessary to take the membrane unit out of service to conduct the test. Today's proposal establishes the minimum frequency for performing a direct integrity test at once per 24 hours. Currently, there is no standard frequency for direct integrity testing that has been adopted by all States and membrane treatment facilities. In a recent survey, the required frequency of integrity testing was found to vary from once every four hours to once per week; however, the most common frequency for conducting a direct integrity test was once every 24 hours (USEPA 2001h). Specifically, 10 out of 14 States that require periodic direct integrity testing specify a frequency of once every 24 hours. Furthermore, many membrane manufacturers of systems with automated integrity test systems set up the membrane units to automatically perform a direct integrity test once per 24 hours. EPA has concluded that the 24 hour direct integrity test frequency ensures that removal efficiency is verified on a routine basis without resulting in excessive system downtime.

Since most direct integrity tests are applied periodically, it is necessary to implement some level of continuous monitoring to assess process performance between direct integrity test events. In the absence of a continuous direct integrity test, continuous indirect integrity monitoring is required. Although it has been shown that commonly used indirect integrity monitoring methods lack the sensitivity to detect small integrity breaches that are of concern (Adham *et al.* 1995), they can detect large breaches and provide some assurance that a major failure has not occurred between direct integrity test events. Turbidity monitoring is proposed as the method of indirect integrity monitoring unless the State approves an alternate approach. Available data indicate that an integral membrane filtration process can consistently produce water with a turbidity less than 0.10 NTU, regardless of the feedwater quality. Consequently, EPA is proposing that exceedance of a filtrate turbidity value of 0.15 NTU triggers direct integrity testing to verify and isolate the integrity breach.

c. *Request for comment.* EPA requests comment on the following issues:

- EPA is proposing to include membrane cartridge filters that can be direct integrity tested under the definition of a membrane filtration process since one of the key differences between membrane filtration processes and bag and cartridge filters, within the context of this regulation, is the applicability of direct integrity test methods to the filtration process. EPA requests comment on the inclusion of membrane cartridge filters that can be direct integrity tested under the definition of a membrane filtration process in this rule.
- The applicability of the proposed *Cryptosporidium* removal credits and performance criteria to *Giardia lamblia*.
- Appropriate surrogates, or the characteristics of appropriate surrogates, for use in challenge testing. EPA requests data or information demonstrating the correlation between removal of a proposed surrogate and removal of *Cryptosporidium* oocysts.
- The use of a non-destructive performance test and associated quality control release values for demonstrating the *Cryptosporidium* removal capability of membrane modules that are not directly challenge tested.
- The appropriateness of the minimum direct integrity test frequency of once per 24 hours.
- The proposed minimum reporting frequency for direct integrity testing results above the control limit and indirect integrity monitoring results that trigger direct integrity monitoring.

12. Bag and Cartridge Filtration

a. *What is EPA proposing today?* EPA is proposing criteria for awarding *Cryptosporidium* removal credit of 1 log for bag filtration processes and 2 log for cartridge filtration processes. To receive removal credit the process must: (1) Meet the basic definition of a bag or cartridge filter and (2) have removal efficiency established through challenge testing.

Definition of a Bag or Cartridge Filter

For the purpose of this rule, bag and cartridge filters are defined as pressure driven separation processes that remove particulate matter larger than 1 μm using an engineered porous filtration media through either surface or depth filtration.

The distinction between bag filters and cartridge filters is based on the type of filtration media used and the manner in which the devices are constructed. Bag filters are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside. Cartridge filters are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

Although all filters classified as cartridge filters share similarities with respect to their construction, there are significant differences among the various commercial cartridge filtration devices. From a public health perspective, an important distinction among these filters is the ability to directly test the integrity of the filtration system in order to verify that there are no leaks that could result in contamination of the filtrate. Any membrane cartridge filtration device that can be direct integrity tested according to the criteria specified in section IV.C.11.a is eligible for removal credit as a membrane, subject to the criteria specified in that section. Section IV.C.12 applies to all bag filters, as well as to cartridge filters which cannot be direct integrity tested.

Challenge Testing

In order to receive 1 log removal credit, a bag filter must have a demonstrated removal efficiency of 2 log or greater for *Cryptosporidium*. Similarly, to receive 2 log removal credit, a cartridge filter must have a demonstrated removal efficiency of 3 log or greater for *Cryptosporidium*. The 1 log factor of safety is applied to the removal credit awarded to these filtration devices based on two primary considerations. First, the removal efficiency of some bag and cartridge filters has been observed to vary by more than 1 log over the course of operation (Li *et al.* 1997, NSF 2001a, NSF 2001b). Second, bag and cartridge filters are not routinely direct integrity tested during operation in the field; hence, there is no means of verifying the removal efficiency of filtration units during routine use. Based on these considerations, a conservative approach to awarding removal credit based on challenge test results is warranted.

Removal efficiency must be demonstrated through a challenge test conducted on the bag or cartridge filter proposed for use in full-scale drinking water treatment facilities for removal of *Cryptosporidium*. Challenge testing is required for specific products and is not intended to be site specific. At the discretion of the State, data from challenge studies conducted prior to promulgation of this regulation may be considered in lieu of additional testing. However, the prior testing must have been conducted in a manner that demonstrates a removal efficiency for *Cryptosporidium* commensurate with the treatment credit awarded to the process. Guidance on conducting challenge studies to demonstrate the *Cryptosporidium* removal efficiency of filtration units is presented in the Membrane Filtration Guidance Manual (USEPA 2003e). Challenge testing must

be conducted according to the following criteria:

• Challenge testing must be conducted on a full-scale filter element identical in material and construction to the filter elements proposed for use in full-scale treatment facilities.

• Challenge testing must be conducted using *Cryptosporidium* oocysts or a surrogate which is removed no more efficiently than *Cryptosporidium* oocysts. The organism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discretely quantifying the specific organism or surrogate used in the test, *i.e.*, gross water quality measurements such as turbidity cannot be used.

• The maximum allowable feed water concentration used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and calculated using one of the following equations.

For bag filters:

$$\text{Maximum Feed Concentration} = 3.16 \times 10^3 \times (\text{Filtrate Detection Limit})$$

For cartridge filters:

$$\text{Maximum Feed Concentration} = 3.16 \times 10^4 \times (\text{Filtrate Detection Limit})$$

This will allow the demonstration of up to 3.5 log removal for bag filters and 4.5 log removal for cartridge filters during challenge testing if the challenge particulate is removed to the detection limit.

• Challenge testing must be conducted at the maximum design flow rate specified by the manufacturer.

• Each filter must be tested for a duration sufficient to reach 100% of the terminal pressure drop, a parameter specified by the manufacturer which establishes the end of the useful life of the filter. In order to achieve terminal pressure drop during the test, it will be necessary to add particulate matter to the test solution, such as fine carbon test dust or bentonite clay particles.

• Each filter must be challenged with the challenge particulate during three periods over the filtration cycle: within 2 hours of start-up after a new bag or cartridge filter has been installed, when the pressure drop is between 45 and 55% of the terminal pressure drop, and at the end of the run after the pressure drop has reached 100% of the terminal pressure drop.

• Removal efficiency of a bag or cartridge filtration process is determined from the results of the challenge test, and expressed in terms of log removal values as defined by the following equation:

$$LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$$

where LRV = log removal value demonstrated during challenge testing; C_f = the feed concentration used during the challenge test; and C_p = the filtrate concentration observed during the challenge test. For this equation to be valid, equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term C_p is set equal to the detection limit. An LRV is calculated for each filter evaluated during the test.

• In order to receive treatment credit for *Cryptosporidium* under this proposed rule, challenge testing must demonstrate a removal efficiency of 2 log or greater for bag filtration and 3 log or greater for cartridge filtration. If fewer than twenty filters are tested, then removal efficiency of the process is set equal to the lowest of the representative LRVs among the various filters tested. If twenty or more filters are tested, then removal efficiency of the process is set equal to the 10th percentile of the representative LRVs among the various filters tested. The percentile is defined by [i/(n+1)] where i is the rank of n individual data points ordered lowest to highest. It may be necessary to calculate the 10th percentile using linear interpolation.

• Any significant modification to the filtration unit (*e.g.,* changes to the filtration media, changes to the configuration of the filtration media, significant modifications to the sealing system) would require additional challenge testing to demonstrate removal efficiency of the modified unit.

b. *How was this proposal developed?* The Stage 2 M–DBP Agreement in Principle recommended that EPA develop criteria for awarding *Cryptosporidium* removal credits of 1 log for bag filters and 2 log for cartridge filters. Today's proposal is consistent with the Agreement.

A limited amount of published data are available regarding the removal efficiency of bag and cartridge filters with respect to *Cryptosporidium* oocysts or suitable surrogates. The relevant studies identified in the literature are summarized in Table IV–18.

TABLE IV–18.—RESULTS FROM STUDIES OF *Cryptosporidium* OR SURROGATE REMOVAL BY BAG AND CARTRIDGE FILTERS

Process	Log removal	Organism/surrogate	Reference
Bag and cartridge filtration in series.	1.1 to 2.1	3 to 6 μm spheres	NSF 2001a.
Cartridge filtration	3.5 (average)	*Cryptosporidium*	Enriquez et al. 1999.
Cartridge filtration	3.3 (average)	*Cryptosporidium*	Roessler, 1998.
Cartridge filtration	1.1 to 3.3	*Cryptosporidium*	Schaub et al. 1993.
Cartridge filtration	0.5 to 3.6	5.7 μm spheres	Long, 1983.
Cartridge filtration	2.3 to 2.8	*Cryptosporidium*	Ciardelli, 1996a.
Cartridge filtration	2.7 to 3.7	*Cryptosporidium*	Ciardelli, 1996b.
Prefilter and bag filter in series	1.9 to 3.2	3.7 μm spheres	NSF 2001b.
Bag filtration	~3.0	*Cryptosporidium*	Cornwell and LeChevallier, 2002.
Bag filtration	0.5 to 3.6	*Cryptosporidium*	Li et al. 1997.
Bag filtration	0.5 to 2.0	4.5 μm spheres	Goodrich et al. 1995.

These data demonstrate highly variable removal performance for these processes, ranging from 0.5 log to 3.6 log for both bag and cartridge filtration. Results of these studies also show no correlation between the pore size rating established by the manufacturer and the removal efficiency of a filtration device. In a study evaluating two cartridge filters, both with a pore size rating of 3 μm, a 2 log difference in *Cryptosporidium* oocyst removal was observed between the two filters (Schaub *et al.* 1993). Another study evaluated seventeen cartridge filters with a range of pore size ratings from 1 μm to 10 μm and found no correlation with removal efficiency (Long, 1983). Li *et al.* (1997) evaluated three bag filters with similar pore size ratings and observed a 3 log difference in

Cryptosporidium oocyst removal among them. These results indicate that bag and cartridge filters may be capable of achieving removal of oocysts in excess of 3 log; however, performance can vary significantly among products and there appears to be no correlation between pore size rating and removal efficiency.

Based on available data, specific design criteria that correlate to removal efficiency cannot be derived for bag and cartridge filters. Furthermore, the removal efficiency of these proprietary devices can be impacted by product variability, increasing pressure drop over the filtration cycle, flow rate, and other operating conditions. The data in Table IV–18 were generated from studies performed under a variety of operating conditions, many of which could not be considered conservative (or worst-case) operation. These considerations lead to the proposed challenge testing requirements which are intended to establish a product-specific removal efficiency.

The proposed challenge testing is product-specific and not site-specific since the intent of this testing is to demonstrate the removal capabilities of the filtration device rather than evaluate the feasibility of implementing the technology at a specific plant. Challenge testing must be conducted using full-scale filter elements in order to evaluate the performance of the entire unit, including the filtration media, seals, filter housing and other components integral to the filtration system. This will improve the applicability of challenge test results to full-scale performance. Multiple filters of the same type can be tested to provide a better statistical basis for estimating removal efficiency.

Either *Cryptosporidium* oocysts or a suitable surrogate could be used as the challenge particulate during the test. Challenge testing with *Cryptosporidium* provides direct verification of removal efficiency; however, some studies have demonstrated that surrogates, such as polystyrene microspheres, can provide an accurate or conservative measure of removal efficiency (Long 1983, Li *et al.* 1997). Furthermore, the National Sanitation Foundation (NSF) Environmental Technology Verification (ETV) protocol for verification testing for physical removal of microbiological and particulate contaminants specifies the use of polymeric microspheres of a known size distribution (NSF 2002b). Guidance on selection of an appropriate surrogate for establishing a removal efficiency for *Cryptosporidium* during challenge testing is presented in the Membrane Filtration Guidance Manual (USEPA 2003e).

In order to demonstrate a removal efficiency of at least 2 or 3 log for bag or cartridge filters, respectively, it will likely be necessary to seed the challenge particulate into the test solution. A criticism of published studies that use this approach is that the seeded levels are orders of magnitude higher than those encountered in natural waters and this could potentially lead to artificially high estimates of removal efficiency. To address this issue, the feed concentration applied to the filter during challenge studies is capped at a level that will allow the demonstration of a removal efficiency up to 4.5 log for cartridge filters and 3.5 log for bag filters if the challenge particulate is removed to the detection level.

The removal efficiency of some bag and cartridge filtration devices has been shown to decrease over the course of a filtration cycle due to the accumulation of solids and resulting increase in pressure drop. As an example, Li *et al.* (1997) observed that the removal of 4.5 μm microspheres by a bag filter decreased from 3.4 log to 1.3 log over the course of a filtration cycle. Studies evaluating bag and cartridge filtration under the NSF ETV program have also shown a degradation in removal efficiency over the course of the filtration cycle (NSF 2001a and 2001b). In order to evaluate this potential variability, the challenge studies are designed to assess removal efficiency during three periods of a filtration cycle: within two hours of startup following installation of a new filter, between 45% and 55% of terminal pressure drop, and at the end of the run after 100% of terminal pressure drop is realized.

Although challenge testing can provide an estimate of removal efficiency for a bag or cartridge filtration process, it is not feasible to conduct a challenge test on every production filter. This, coupled with variability within a product line, could result in some production filters that do not meet the removal efficiency demonstrated during challenge testing. For membrane filtration processes, this problem is addressed through the use of a quality control release value established for a non-destructive test, such as a bubble point test or pressure hold test, that is correlated to removal efficiency. Since the non-destructive test can be applied to all production membrane modules, this provides a feasible means of verifying the performance of every membrane module used by a PWS. However, the non-destructive tests applied to membrane filtration processes cannot be applied to most bag and cartridge filtration devices, and EPA is not aware of an alternative non-destructive test that can be used with these devices.

Typical process monitoring for bag and cartridge filtration systems includes turbidity and pressure drop to determine when filters must be replaced. However, the applicability of either of these process monitoring parameters as tools for verifying removal of *Cryptosporidium* has not been demonstrated. Only a few bag or cartridge filtration studies have attempted to correlate turbidity removal with removal of *Cryptosporidium* oocysts or surrogates. Li *et al.* (1997) found that the removal efficiency for turbidity was consistently lower than removal efficiency for oocysts or microspheres for the three bag filters evaluated. Furthermore, none of the filters was capable of consistently producing a filtered water turbidity below 0.3 NTU for the waters evaluated. The contribution to turbidity from particles much smaller than *Cryptosporidium* oocysts, and much smaller than the mesh size of the filter, make it difficult to correlate removal of turbidity with removal of *Cryptosporidium*. Consequently, EPA is proposing a 1 log factor of safety to be applied to challenge test results in awarding treatment credit to bag and cartridge filters, and is not proposing integrity monitoring requirements for these devices.

c. *Request for comment.* EPA requests comment on the following issues concerning bag and cartridge filters:

- The performance of bag and cartridge filters in removing *Cryptosporidium* through all differential pressure ranges in a filter run—EPA requests laboratory and field data, along with associated quality assurance and quality control information, that will support a determination of the appropriate level of *Cryptosporidium* removal credit to award to these technologies.
- The performance of bag and cartridge filters in removing *Cryptosporidium* when used in series with other bag or cartridge filters—EPA requests laboratory and field data, along with associated quality assurance and quality control information, that will support a determination of the appropriate level of *Cryptosporidium* removal credit to award to these technologies when used in series.
- Appropriate surrogates, or the characteristics of appropriate surrogates, for use in challenge testing bag and cartridge filters—EPA requests data or information demonstrating the correlation between removal of a proposed surrogate and removal of *Cryptosporidium* oocysts.

• The availability of non-destructive tests that can be applied to bag and cartridge filters to verify the removal efficiency of production filters that are not directly challenge tested—EPA requests data or information demonstrating the correlation between a proposed non-destructive test and the removal of *Cryptosporidium* oocysts.

• The applicability of pressure drop monitoring, filtrate turbidity monitoring, or other process monitoring and process control procedures to verify the integrity of bag and cartridge filters—EPA requests data or information demonstrating the correlation between a proposed process monitoring tool and the removal of *Cryptosporidium* oocysts.

• The applicability of bag and cartridge filters to different source water types and treatment scenarios.

• The applicability of the proposed *Cryptosporidium* removal credits and testing criteria to *Giardia lamblia*.

• The use of a 1 log factor of safety for awarding credit to bag and cartridge filters—EPA requests comment on whether this is an appropriate factor of safety to account for the inability to conduct integrity monitoring of these devices, as well as the variability in removal efficiency observed over the course of a filtration cycle for some filtration devices. This inability creates uncertainty regarding both changes in the performance of a given filter during use and variability in performance among filters in a given product line. If the 1 log factor of safety is higher than necessary to account for these factors, should the Agency establish a lower value, such as a 0.5 log factor of safety?

13. Secondary Filtration

a. *What is EPA proposing today?* Today's proposal allows systems using a second filtration stage to receive an additional 0.5 log *Cryptosporidium* removal credit. To be eligible for this credit, the secondary filtration must consist of rapid sand, dual media, granular activated carbon (GAC), or other fine grain media in a separate stage following rapid sand or dual media filtration. A cap, such as GAC, on a single stage of filtration will not qualify for this credit. In addition, the first stage of filtration must be preceded by a coagulation step, and both stages must treat 100% of the flow.

b. *How was this proposal developed?* Although not addressed in the Agreement in Principle, EPA has determined that secondary filtration meeting the criteria described in this section will achieve additional removal of *Cryptosporidium* oocysts. Consequently, additional removal credit may be appropriate. As reported in section III.D, many studies have shown that rapid sand filtration preceded by coagulation can achieve significant removal of *Cryptosporidium* (Patania *et al.* 1995, Nieminski and Ongerth 1995, Ongerth and Pecoraro 1995, LeChevallier and Norton 1992, LeChevallier *et al.* 1991, Dugan *et al.* 2001, Nieminski and Bellamy 2000, McTigue *et al.* 1998, Patania *et al.* 1999, Huck *et al.* 2000, Emelko *et al.* 2000). While these studies evaluated only a single stage of filtration, the same mechanisms of removal are expected to occur in a second stage of granular media filtration.

EPA received data from the City of Cincinnati, OH, on the removal of aerobic spores through a conventional treatment facility that employs GAC contactors for DBP, taste, and odor control after rapid sand filtration. As described previously, a number of studies (Dugan *et al.* 2001, Emelko *et al.* 1999 and 2000, Yates *et al.* 1998, Mazounie *et al.* 2000) have demonstrated that aerobic spores are a conservative indicator of *Cryptosporidium* removal by granular media filtration when preceded by coagulation.

During the period of 1999 and 2000, the mean values of reported spore concentrations in the influent and effluent of the Cincinnati GAC contactors were 35.7 and 6.4 cfu/100 mL, respectively, indicating an average removal of 0.75 log across the contactors. Approximately 16% of the GAC filtered water results were below detection limit (1 cfu/100 mL) so the actual log spore removal may have been greater than indicated by these results.

In summary, studies in the cited literature demonstrate that a fine granular media filter preceded by coagulation can achieve high levels of *Cryptosporidium* removal. Data on increased removal resulting from a second stage of filtration are limited, and there is uncertainty regarding how effective a second stage of filtration will be in reducing levels of microbial pathogens that are not removed by the first stage of filtration. However, EPA has concluded that a secondary filtration process can achieve 0.5 log or greater removal of *Cryptosporidium* based on (1) the theoretical consideration that the same mechanisms of pathogen removal will be operative in both a primary and secondary filtration stage, and (2) data from the City of Cincinnati showing aerobic spore removal in GAC contactors following rapid sand filtration. Therefore, EPA believes it is appropriate to propose 0.5 log additional *Cryptosporidium* treatment credit for systems using secondary filtration which meets the criteria of this section.

c. *Request for comment.* The Agency requests comment on awarding a 0.5 log *Cryptosporidium* removal credit for systems using secondary filtration, including the design and operational criteria required to receive the log removal credit. EPA specifically requests comment on the following issues:

• Should there be a minimum required depth for the secondary filter (*e.g.*, 24 inches) in order for the system to receive credit?

• Should systems be eligible to receive additional *Cryptosporidium* treatment credit within the microbial toolbox for both a second clarification stage (*e.g.*, secondary filtration, second stage sedimentation) and lower finished water turbidity, given that additional particle removal achieved by the second clarification stage will reduce finished water turbidity?

14. Ozone and Chlorine Dioxide

a. *What is EPA proposing today?* Similar to the methodology used for estimating log inactivation of *Giardia lamblia* by various chemical disinfectants in 40 CFR 141.74, EPA is proposing the CT concept for estimating log inactivation of *Cryptosporidium* by chlorine dioxide or ozone. In today's proposal, systems must determine the total inactivation of *Cryptosporidium* each day the system is in operation, based on the CT values in Table IV–19 for ozone and Table IV–20 for chlorine dioxide. The parameters necessary to determine the total inactivation of *Cryptosporidium* must be monitored as stated in 40 CFR 141.74(b)(3)(i), (iii), and (iv), which is as follows:

• The temperature of the disinfected water must be measured at least once per day at each residual disinfectant concentration sampling point.

• The disinfectant contact time(s) (''T'') must be determined for each day during peak hourly flow.

• The residual disinfectant concentration(s) (''C'') of the water before or at the first customer must be measured each day during peak hourly flow.

Systems may have several disinfection segments (the segment is defined as a treatment unit process with a measurable disinfectant residual level and a liquid volume) in sequence along the treatment train. In determining the total log inactivation, the system may calculate the log inactivation for each disinfection segment and use the sum of the log inactivation estimates of *Cryptosporidium* achieved through the

plant. The Toolbox Guidance Manual, available in draft with today's proposal, provides guidance on methodologies for determining CT values and estimating log inactivation for different disinfection reactor designs and operations.

TABLE IV–19.—CT VALUES FOR *Cryptosporidium* INACTIVATION BY OZONE

Log credit	Water Temperature, °C [1]									
	<=0.5	1	2	3	5	7	10	15	20	25
0.5	12	12	10	9.5	7.9	6.5	4.9	3.1	2.0	1.2
1.0	24	23	21	19	16	13	9.9	6.2	3.9	2.5
1.5	36	35	31	29	24	20	15	9.3	5.9	3.7
2.0	48	46	42	38	32	26	20	12	7.8	4.9
2.5	60	58	52	48	40	33	25	16	9.8	6.2
3.0	72	69	63	57	47	39	30	19	12	7.4

[1] CT values between the indicated temperatures may be determined by interpolation.

TABLE IV–20.—CT VALUES FOR *Cryptosporidium* INACTIVATION BY CHLORINE DIOXIDE

Log credit	Water Temperature, °C [1]									
	<=0.5	1	2	3	5	7	10	15	20	25
0.5	319	305	279	256	214	180	138	89	58	38
1.0	637	610	558	511	429	360	277	179	116	75
1.5	956	915	838	767	643	539	415	268	174	113
2.0	1275	1220	1117	1023	858	719	553	357	232	150
2.5	1594	1525	1396	1278	1072	899	691	447	289	188
3.0	1912	1830	1675	1534	1286	1079	830	536	347	226

[1] CT values between the indicated temperatures may be determined by interpolation.

The system may demonstrate to the State, through the use of a State-approved protocol for on-site disinfection challenge studies or other information satisfactory to the State, that CT values other than those specified in Tables IV–19 or IV–20 are adequate to demonstrate that the system is achieving the required log inactivation of *Cryptosporidium*. Protocols for making such demonstrations are available in the Toolbox Guidance Manual.

b. *How was this proposal developed?* EPA relied in part on analyses by Clark *et al.* (2002a and 2002b) to develop the CT values for ozone and chlorine dioxide inactivation of *Cryptosporidium* in today's proposal. Clark *et al.* (2002a) used data from studies of ozone inactivation of *Cryptosporidium* in laboratory water to develop predictive equations for estimating inactivation (Rennecker *et al.* 1999, Li *et al.* 2001) and data from studies in natural water to validate the equations (Owens *et al.* 2000, Oppenheimer *et al.* 2000). For chlorine dioxide, Clark *et al.* (2002b) employed data from Li *et al.* (2001) to develop equations for predicting inactivation, and used data from Owens *et al.* (1999) and Ruffell *et al.* (2000) to validate the equations.

Another step in developing the CT values for *Cryptosporidium* inactivation in today's proposal involved consideration of the appropriate confidence bound to apply when analyzing the inactivation data. A confidence bound represents a safety margin that accounts for variability and uncertainty in the data that underlie the analysis. Confidence bounds are intended to provide a high likelihood that systems operating at a given CT value will achieve at least the corresponding log inactivation level in the CT table.

Two types of confidence bounds that are used when assessing relationships between variables, such as disinfectant dose (CT) and log inactivation, are confidence in the regression and confidence in the prediction. Confidence in the regression accounts for uncertainty in the regression line (*e.g.*, a linear relationship between temperature and the log of the ratio of CT to log inactivation). Confidence in the prediction accounts for both uncertainty in the regression line and variability in experimental observations—it describes the likelihood of a single future data point falling within a range. Bounds for confidence in prediction are wider (*i.e.*, more conservative) than those for confidence in the regression. Depending on the degree of confidence applied, most points in a data set typically will fall within the bounds for confidence in the prediction, while a significant fraction will fall outside the bounds for confidence in the regression.

In developing earlier CT tables, EPA has used bounds for confidence in the prediction. This was a conservative approach that was taken with consideration of the limited inactivation data that were available and that reasonably ensured systems would achieve the required inactivation level. The November 2001 draft of the LT2ESWTR included CT tables for *Cryptosporidium* inactivation by ozone and chlorine dioxide that were derived using confidence in prediction (USEPA 2001g). However, based on comments received on those draft tables, along with further analyses described next, EPA has revised this approach in today's proposal.

The underlying *Cryptosporidium* inactivation data used to develop the CT tables exhibit significant variability. This variability is due to both experimental error and potential true variability in the inactivation rate. Experimental error is associated with the assays used to measure loss of infectivity, measurement of the disinfectant concentration, differences in technique among researchers, and other factors. True variability in the inactivation rate would be associated with variability in resistance to the disinfectant between different populations of oocysts and variability in the effect of water matrix on the inactivation process.

In considering the appropriate confidence bounds to use for developing the CT tables in today's proposal, EPA was primarily concerned with accounting for uncertainty in the regression and for true variability in the inactivation rate. Variability associated with experimental error was a lessor concern, as the purpose of the CT tables is to ensure a given level of inactivation and not predict the measured result of an individual experiment.

Because confidence in the prediction accounts for all variability in the data sets (both true variability and experimental error), it may provide a higher margin of safety than is necessary. Nevertheless, in other disinfection applications, the use of confidence in the prediction may be appropriate, given limited data sets and uncertainty in the source of the variability. However, the high doses of ozone and chlorine dioxide that are needed to inactivate *Cryptosporidium* create an offsetting concern with the formation of DBPs (*e.g.*, bromate and chlorite). In consideration of these factors and the statutory provision for balancing risks among contaminants, EPA attempted to exclude experimental error from the confidence bound when developing the CT tables in today's proposal (*i.e.*, used a less conservative approach than confidence in the prediction).

In order to select confidence bounds reflecting potential true variability between different oocyst populations (lots) but not variability due to measurement and experimental imprecision, it was necessary to estimate the relative contributions of these variance components. This was done by first separating inactivation data points into groups having the same *Cryptosporidium* oocyst lot and experimental conditions (*e.g.*, water matrix, pH, temperature). Next, the variance within each group was determined. It was assumed that this within-group variance could be attributed entirely to experimental error, as neither of the factors expected to account for true variability in the inactivation rate (*i.e.*, oocyst lot or water matrix) changed within a group. Finally, comparing the average within-group variance to the total variance in a data set provided an indication of the fraction of total variance that was due to experimental error (see Sivaganesan 2003 and Messner 2003 for details).

In carrying out this analysis on the Li *et al.* (2001) and Rennecker *et al.* (1999) data sets for ozone inactivation of *Cryptosporidium*, EPA estimated that 87.5% of the total variance could be attributed to experimental error (Sivaganesan 2003). A similar analysis done by Najm *et al.* (2002) on the Oppenheimer *et al.* (2000) data set for ozone produced an estimate of 89% of the total variance due to experimental error. For chlorine dioxide inactivation of *Cryptosporidium*, EPA estimated that 62% of the total variance in the Li *et al.* (2001) and Ruffle *et al.* (1999) data sets could be attributed to experimental error (Messner 2003). The different fractions attributed to experimental error between the chlorine dioxide and ozone data sets presumably relates to the use of different experimental techniques (*e.g.*, infectivity assays).

EPA employed estimates of the fraction of variance not attributable to experimental error (12.5% for ozone and 38% for chlorine dioxide) in a modified form of the equation used to calculate a bound for confidence in prediction (Messner 2003). These were applied to the regression equations developed by Clark *et al.* (2002a and 2002b) in order to estimate CT values for an upper 90% confidence bound (Sivaganesan 2003, Messner 2003). These are the CT values shown in Tables IV–19 and IV–20 for ozone and chlorine dioxide, respectively.

Since the available data are not sufficient to support the CT calculation for an inactivation level greater than 3 log, the use of Tables IV–19 and IV–20 is limited to inactivation less than or equal to 3 log. In addition, the temperature limitation for these tables is 1 to 25 °C. If the water temperature is higher than 25 °C, temperature should be set to 25 °C for the log inactivation calculation.

EPA recognizes that inactivation rates may be sensitive to water quality and operational conditions in the plant. To reflect this potential, systems are given the option to perform a site specific inactivation study to determine CT requirements. The State must approve the protocols or other information used to derive alternative CT values. However, EPA has provided guidance for systems in making such demonstrations in the Toolbox Guidance Manual.

During meetings of the Stage 2 M-DBP Advisory Committee, CT values were used in the model for impact analysis of different regulatory options (the model Surface Water Analytical Tool (SWAT), as described in Economic Analysis for the LT2ESWTR, USEPA 2003a). Those preliminary CT values were based on a subset of the data from the Li *et al.* (2001) study with laboratory waters and were adjusted with a factor to match the mean CT values derived from the Oppenheimer *et al.* (2000) study with natural waters. In comparison, the CT values in today's proposal are higher. However, the current CT values are based on larger data sets and more comprehensive analyses. Consequently, they provide more confidence in estimates of *Cryptosporidium* log inactivation than the preliminary estimates used in earlier SWAT modeling. EPA has subsequently re-run analyses for LT2ESWTR impact assessments with the updated CT values (USEPA 2003a).

c. *Request for comments.* EPA requests comment on the proposed approach to awarding credit for inactivation of *Cryptosporidium* by chlorine dioxide and ozone, including the following specific issues:

- Determination of CT and the confidence bounds used for estimating log inactivation of *Cryptosporidium*;
- The ability of systems to apply these CT tables in consideration of the MCLs for bromate and chlorite; and
- Any additional data that may be used to confirm or refine the proposed CT tables.

15. Ultraviolet Light

a. *What is EPA proposing today?* EPA is proposing criteria for awarding credit to ultraviolet (UV) disinfection processes for inactivation of *Cryptosporidium*, *Giardia lamblia*, and viruses. The inactivation credit a system can receive for each target pathogen is based on the UV dose applied by the system in relation to the UV dose requirements in this section (see Table IV–21).

To receive UV disinfection credit, a system must demonstrate a UV dose using the results of a UV reactor validation test and ongoing monitoring. The reactor validation test establishes the operating conditions under which a reactor can deliver a required UV dose. Monitoring is used to demonstrate that the system maintains these validated operating conditions during routine use.

UV dose (fluence) is defined as the product of the UV intensity over a surface area (fluence rate) and the exposure time. In practice, UV reactors deliver a distribution of doses due to variation in light intensity and flow path as particles pass through the reactor. However, for the purpose of determining compliance with the dose requirements in Table IV–21, UV dose must be assigned to a reactor based on the degree of inactivation of a microorganism achieved during a reactor validation test. This assigned UV dose is determined through comparing the reactor validation test results with a known dose-response relationship for the test microorganism. The State may

designate an alternative basis for awarding UV disinfection credit.

EPA is developing the UV Disinfection Guidance Manual (USEPA 2003d) to assist systems and States with implementing UV disinfection, including validation testing of UV reactors. This guidance is available in draft in the docket for today's proposal (*http://www.epa.gov/edocket/*).

UV Dose Tables

Table IV–21 shows the UV doses that systems must apply to receive credit for up to 3 log inactivation of *Cryptosporidium* and *Giardia lamblia* and up to 4 log inactivation of viruses. These dose values are for UV light at a wavelength of 254 nm as delivered by a low pressure mercury vapor lamp. However, the dose values can be applied to other UV lamp types (*e.g.*, medium pressure mercury vapor lamps) through reactor validation testing, such as is described in the draft UV Disinfection Guidance Manual (USEPA 2003d). In addition, the dose values in Table IV–21 are intended for post-filter application of UV in filtration plants and for systems that meet the filtration avoidance criteria in 40 CFR 141.71.

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Table IV-21.-- UV Dose Requirements for *Cryptosporidium*, *Giardia lamblia*, and Virus Inactivation Credit

Log credit	*Cryptosporidium* UV dose (mJ/cm^2)	*Giardia lamblia* UV dose (mJ/cm^2)	Virus UV dose (mJ/cm^2)
0.5	1.6	1.5	39
1.0	2.5	2.1	58
1.5	3.9	3.0	79
2.0	5.8	5.2	100
2.5	8.5	7.7	121
3.0	12	11	143
3.5	NA	NA	163
4.0	NA	NA	186

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Reactor Validation Testing

For a system to receive UV disinfection credit, the UV reactor type used by the system must undergo validation testing to demonstrate the operating conditions under which the reactor can deliver the required UV dose. Unless the State approves an alternative approach, this testing must involve the following: (1) Full scale testing of a reactor that conforms uniformly to the UV reactors used by the system and (2) inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp.

Validation testing must determine a set of operating conditions that can be monitored by the system to ensure that the required UV dose is delivered under the range of operating conditions applicable to the system. At a minimum, these operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status. The validated operating conditions determined by testing must account for the following factors: (1) UV absorbance of the water, (2) lamp fouling and aging, (3) measurement uncertainty of on-line sensors, (4) dose distributions arising from the velocity profiles through the reactor, (5) failure of UV lamps or other critical system components, and (6) inlet and outlet piping or channel configurations of the UV reactor. In the draft UV Disinfection Guidance Manual (USEPA 2003d), EPA describes testing protocols for reactor validation that are intended to meet these criteria.

Reactor Monitoring

Systems must monitor for parameters necessary to demonstrate compliance with the operating conditions that were validated for the required UV dose. At a minimum systems must monitor for UV intensity as measured by a UV sensor, flow rate, and lamp outage. As part of this, systems must check the calibration of UV sensors and recalibrate in accordance with a protocol approved by the State.

b. *How was this proposal developed?* UV disinfection is a physical process relying on the transference of electromagnetic energy from a source (lamp) to an organism's cellular material (USEPA 1986). In the Stage 2 M–DBP Agreement in Principle, the Advisory Committee recommended that EPA determine the UV doses needed to achieve up to 3 log inactivation of *Giardia lamblia* and *Cryptosporidium* and up to 4 log inactivation of viruses.

The Agreement further recommends that EPA develop standards to determine if UV systems are acceptable for compliance with drinking water disinfection requirements, including (1) a validation protocol for drinking water applications of UV technology and (2) on-site monitoring requirements to ensure ongoing compliance with UV dose tables. EPA also agreed to develop a UV guidance manual to facilitate design and operation of UV installations. Today's proposal and

accompanying guidance for UV are consistent with the Agreement.

UV Dose Tables

The UV dose values in Table IV–21 are based on meta-analyses of UV inactivation studies with *Cryptosporidium parvum*, *Giardia lamblia*, *Giardia muris*, and adenovirus (Qian *et al.* 2003, USEPA 2003d). Proposed UV doses for inactivation of viruses are based on the dose-response of adenovirus because, among viruses that have been studied, it appears to be the most UV resistant and is a widespread waterborne pathogen (health effects of adenovirus are described in Embrey 1999).

The data supporting the dose values in Table IV–21 are from bench-scale studies using low pressure mercury vapor lamps. These data were chosen because the experimental conditions allow UV dose to be accurately quantified. Low pressure lamps emit light primarily at a single wavelength (254 nm) within the germicidal range of 200–300 nm. However, as noted earlier, these dose tables can be applied to reactors with other lamp types through reactor challenge testing, as described in the draft guidance manual. Bench scale studies are preferable for determining pathogen dose-response characteristics, due to the uniform dose distribution.

The data sets and statistical evaluation that were used to develop the UV dose table for *Cryptosporidium*, *Giardia lamblia*, and viruses are described in the draft UV Disinfection Guidance Manual (USEPA 2003d) and Qian *et al.* 2003.

Reactor Validation Testing

Today's proposal requires testing of full-scale UV reactors because of the difficulty in predicting reactor disinfection performance based on modeled results or on the results of testing at a reduced scale. All flow-through UV reactors deliver a distribution of doses due to variation in light intensity within the reactor and the different flow paths of particles passing through the reactor. Moreover, the reactor dose distribution varies temporally due to processes like lamp aging and fouling, changes in UV absorbance of the water, and fluctuations in flow rate. Consequently, it is more reliable to evaluate reactor performance through a full scale test under conditions that can be characterized as ''worst case'' for a given application. Such conditions include maximum and minimum flow rate and reduced light intensity within the reactor that accounts for lamp aging, fouling, and UV absorbance of the water. Protocols for reactor validation testing are presented in the draft UV guidance manual.

c. *Request for comment.* The Agency requests comment on whether the criteria described in this section for awarding treatment credit for UV disinfection are appropriate, and whether additional criteria, or more specific criteria, should be included.

16. Individual Filter Performance

a. *What is EPA proposing today?* EPA is proposing an additional 1.0 log *Cryptosporidium* treatment credit for systems that achieve individual filter performance consistent with the goals established for the Partnership for Safe Water Phase IV in August 2001 (AWWA *et al.* 2001). Specifically, systems must demonstrate ongoing compliance with the following turbidity criteria, based on continuous monitoring of turbidity for each individual filter as required under 40 CFR 141.174 or 141.560, as applicable:

(1) Filtered water turbidity less than 0.1 NTU in at least 95% of the maximum daily values recorded at each filter in each month, excluding the 15 minute period following backwashes, and

(2) No individual filter with a measured turbidity level of greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

Note that today's proposal does not include a required peer review step as a condition for receiving additional credit. Rather, EPA is proposing to award additional credit to systems that meet the performance goals of a peer review program (Phase IV). Systems that receive the 1 log additional treatment credit for individual filter performance, as described in this section, cannot also receive an additional 0.5 log additional credit for lower finished water turbidity as described in section IV.C.8.

b. *How was this proposal developed?* In the Stage 2 M–DBP Agreement in Principle, the Advisory Committee recommended a peer review program as a microbial toolbox component that should receive a 1.0 log *Cryptosporidium* treatment credit. The Committee specified Phase IV of the Partnership for Safe Water (Partnership) as an example of the type of peer review program where a 1.0 log credit would be appropriate.

The Partnership is a voluntary cooperative program involving EPA, the Association of Metropolitan Water Agencies (AMWA), the American Water Works Association (AWWA), the National Association of Water Companies (NAWC), the Association of State Drinking Water Administrators (ASDWA), the American Water Works Association Research Foundation (AWWARF), and surface water utilities throughout the United States. The intent of the Partnership is to increase protection against microbial contaminants by optimizing treatment plant performance.

At the time of the Advisory Committee recommendation, Phase IV was under development by the Partnership. It was to be based on Composite Correction Program (CCP) (USEPA 1991) procedures and performance goals, and was to be awarded based on an on-site evaluation by a third-party team. The performance goals for Phase IV were such that, over a year, each sedimentation basin and each filter would need to produce specified turbidity levels based on the maximum of all the values recorded during the day. Sedimentation performance goals were set at 2.0 NTU if the raw water was greater than 10 NTU on an annual basis and 1.0 NTU if the raw water was less than 10 NTU. Each filter was to meet 0.1 NTU 95% of the time except for the 15 minute period following placing the filter in operation. In addition, filters were expected to have maximum turbidity of 0.3 NTU and return to less than 0.1 NTU within 15 minutes of the filter being placed in service.

The primary purpose of the on-site evaluation was to confirm that the performance of the plant was consistent with Phase IV performance goals and that the system had the administrative support and operational capabilities to sustain the performance long-term. The on-site evaluation in Phase IV also allowed utilities that could not meet the desired performance goals to demonstrate to the third-party that they had achieved the highest level of performance given their unique raw water quality.

After the signing of the Stage 2 M–DBP Agreement in Principle in September 2000, the Partnership decided to eliminate the on-site third-party evaluation as a component of Phase IV. Instead, the requirement for Phase IV is for the water system to complete an application package that will be reviewed by trained utility volunteers. Included in the application package is an Optimization Assessment Spreadsheet in which the system enters water quality and treatment data to demonstrate that Phase IV performance levels have been achieved. The application also requires narratives related to administrative support and operational capabilities to sustain performance long-term.

Today's proposal is consistent with the performance goals of Phase IV.

Rather than require systems to complete an application package with historical data and narratives, the LT2ESWTR requires systems to demonstrate to the State that they meet the individual filter performance goals of Phase IV on an ongoing basis to receive the 1.0 log additional *Cryptosporidium* treatment credit. EPA is not requiring systems to demonstrate that they meet sedimentation performance goals of Phase IV. While EPA recognizes that settled water turbidity is an important operational performance measure for a plant, the Agency does not have data directly relating it to finished water quality and pathogen risk.

The November 2001 pre-proposal draft of the LT2ESWTR described a potential 1.0 log credit for systems that achieved individual filter effluent (IFE) turbidity below 0.15 NTU in 95 percent of samples (USEPA 2001g). The Science Advisory Board (SAB) subsequently reviewed this credit and supporting data on the relationship between filter effluent turbidity and *Cryptosporidium* removal efficiency (described in section IV.C.8). In written comments from a December 2001 meeting of the Drinking Water Committee, an SAB panel recommended only a 0.5 log credit for 95th percentile IFE turbidity below 0.15 NTU.

To address this recommendation from the SAB, EPA is proposing that systems meet the individual filter performance criteria of Phase IV of the Partnership in order to be eligible for a 1.0 log additional *Cryptosporidium* treatment credit. This proposed approach responds to the concerns raised by the SAB because the Phase IV criteria are more stringent than those in the 2001 pre-proposal draft of the LT2ESWTR. For example, today's proposal sets a maximum limit on individual filter effluent turbidity of 0.3 NTU, whereas no such upper limit was described in the 2001 pre-proposal draft.

In summary, EPA has concluded that it is appropriate to award additional *Cryptosporidium* treatment credit for systems meeting stringent individual filter performance standards. Modestly elevated turbidity from a single filter may not significantly impact combined filter effluent turbidity levels, which are regulated under IESWTR and LT1ESWTR, but may indicate a substantial reduction in the overall pathogen removal efficiency of the filtration process. Consequently, systems that continually achieve very low turbidity in each individual filter are likely to provide a significantly more effective microbial barrier. EPA expects that systems that select this toolbox option will have achieved a high level of treatment process optimization and process control, and will have both a history of consistent performance over a range of raw water quality conditions and the capability and resources to maintain this performance long-term.

c. *Request for comment.* The Agency invites comment on the following issues related to the proposed credit for individual filter performance.

- Are there different or additional performance measures that a utility should be required to meet for the 1 log additional credit?
- Are there existing peer review programs for which treatment credit should be awarded under the LT2ESWTR? If so, what role should primacy agencies play in establishing and managing any such peer review program?
- The individual filter effluent turbidity criterion of 0.1 NTU is proposed because it is consistent with Phase IV Partnership standards, as based on CCP goals. However, with allowable rounding, turbidity levels less than 0.15 NTU are in compliance with a standard of 0.1. Consequently, EPA requests comment on whether 0.15 NTU should be the standard for individual filter performance credit, as this would be consistent with the standard of 0.15 NTU that is proposed for combined filter performance credit in section IV.C.8.

17. Other Demonstration of Performance

a. *What is EPA proposing today?* The purpose of the ''demonstration of performance'' toolbox component is to allow a system to demonstrate that a plant, or a unit process within a plant, should receive a higher *Cryptosporidium* treatment credit than is presumptively awarded under the LT2ESWTR. For example, as described in section IV.A, plants using conventional treatment receive a presumptive 3 log credit towards the *Cryptosporidium* treatment requirements in Bins 2–4 of the LT2ESWTR. This credit is based on a determination by EPA that conventional treatment plants achieve an average *Cryptosporidium* removal of 3 log when in compliance with the IESWTR or LT1ESWTR. However, EPA recognizes that some conventional treatment plants may achieve average *Cryptosporidium* removal efficiencies greater than 3 log. Similarly, some systems may achieve *Cryptosporidium* reductions with certain toolbox components that are greater than the presumptive credits awarded under the LT2ESWTR, as described in this section (IV.C).

Where a system can demonstrate that a plant, or a unit process within a plant, achieves a *Cryptosporidium* reduction efficiency greater than the presumptive credit specified in the LT2ESWTR, it may be appropriate for the system to receive a higher *Cryptosporidium* treatment credit. Today's proposal does not include specific protocols for systems to make such a demonstration, due to the potentially complex and site specific nature of the testing that would be required. Rather, today's proposal allows a State to award a higher level of *Cryptosporidium* treatment credit to a system where the State determines, based on site-specific testing with a State-approved protocol, that a treatment plant or a unit process within a plant reliably achieves a higher level of *Cryptosporidium* removal on a continuing basis. Also, States may award a lower level of *Cryptosporidium* treatment credit to a system where a State determines, based on site specific information, that a plant or a unit process within a plant achieves a *Cryptosporidium* removal efficiency less than a presumptive credit specified in the LT2ESWTR.

Systems receiving additional *Cryptosporidium* treatment credit through a demonstration of performance may be required by the State to report operational data on a monthly basis to establish that conditions under which demonstration of performance credit was awarded are maintained during routine operation. The Toolbox Guidance Manual (USEPA 2003f) will describe potential approaches to demonstration of performance testing. This guidance is available in draft in the docket for today's proposal (*http://www.epa.gov/edocket/*).

Note that as described in section IV.C, today's proposal allows treatment plants to achieve additional *Cryptosporidium* treatment credit through meeting the design and/or operational criteria of microbial toolbox components, such as combined and individual filter performance, presedimentation, bank filtration, two-stage softening, secondary filtration, etc. Plants that receive additional *Cryptosporidium* treatment credit through a demonstration of performance are not also eligible for the presumptive credit associated with microbial toolbox components if the additional removal due to the toolbox component is captured in the demonstration of performance credit. For example, if a plant receives a demonstration of performance credit based on removal of *Cryptosporidium* or an indicator while operating under conditions of lower finished water turbidity, the plant may not also receive additional presumptive credit for lower

finished water turbidity toolbox components.

This demonstration of performance credit does not apply to the use of chlorine dioxide, ozone, or UV light, because today's proposal includes specific provisions allowing the State to modify the standards for awarding disinfection credit to these technologies. As described in section IV.C.14, States can approve site-specific CT values for inactivation of *Cryptosporidium* by chlorine dioxide and ozone; as described in section IV.C.15, States can approve an alternative approach for validating the performance of UV reactors.

b. *How was this proposal developed?* The Stage 2 M–DBP Agreement in Principle recommends demonstration of performance as a process for systems to receive *Cryptosporidium* treatment credit higher than the presumptive credit for many microbial toolbox components, as well as credit for technologies not listed in the toolbox. EPA is aware that there may be plants where particular unit processes, or combinations of unit processes, achieve greater *Cryptosporidium* removal than the presumptive credit awarded under the LT2ESWTR. In addition, the Agency would like to allow for the use of *Cryptosporidium* treatment processes not addressed in the LT2ESWTR, where such processes can demonstrate a reliable specific log removal. Due to these factors, EPA is proposing a demonstration of performance component in the microbial toolbox, consistent with the Advisory Committee recommendation.

The Agreement in Principle makes no recommendations for how a demonstration of performance should be conducted. It is generally not practical for systems to directly quantify high log removal of *Cryptosporidium* in treatment plants because of the relatively low occurrence of *Cryptosporidium* in many raw water sources and limitations with analytical methods. Consequently, if systems are to demonstrate the performance of full scale plants in removing *Cryptosporidium*, this typically will require the use of indicators, where the removal of the indicator has been correlated with the removal of *Cryptosporidium*. As described previously, a number of studies have shown that aerobic spores are an indicator of *Cryptosporidium* removal by sedimentation and filtration (Dugan *et al.* 2001, Emelko *et al.* 1999 and 2000, Yates *et al.* 1998, Mazounie *et al.* 2000).

The nature of demonstration of performance testing that will be appropriate at a given facility will depend on site specific factors, such as water quality, the particular process(es) being evaluated, resources and infrastructure, and the discretion of the State. Consequently, EPA is not proposing specific criteria for demonstration of performance testing. Instead, systems must develop a testing protocol that is approved by the State, including any requirements for ongoing reporting if demonstration of performance credit is approved. EPA has developed a draft document, Toolbox Guidance Manual (USEPA 2003f), that is available with today's proposal and provides guidance on demonstration of performance testing.

c. *Request for comment.* The Agency requests comment on today's proposal for systems to demonstrate higher *Cryptosporidium* removal levels. EPA specifically requests comment on the following issues:

- Approaches that should be considered or excluded for demonstration of performance testing;
- Whether EPA should propose minimum elements that demonstration of performance testing must include;
- Whether a factor of safety should be applied to the results of demonstration of performance testing to account for potential differences in removal of an indicator and removal of *Cryptosporidium*, or uncertainty in the application of pilot-scale results to full-scale plants;
- Whether or under what conditions a demonstration of performance credit should be allowed for a unit process within a plant—a potential concern is that certain unit processes, such as a sedimentation basin, can be operated in a manner that will increase removal in the unit process but decrease removal in subsequent treatment processes and, therefore, lead to no overall increase in removal through the plant. An approach to address this concern is to limit demonstration of performance credit to removal demonstrated across the entire treatment plant.

D. Disinfection Benchmarks for Giardia lamblia and Viruses

1. What Is EPA Proposing Today?

EPA proposes to establish the disinfection benchmark under the LT2ESWTR as a procedure to ensure that systems maintain protection against microbial pathogens as they implement the Stage 2 M–DBP rules (*i.e.*, Stage 2 DBPR and LT2ESWTR). The disinfection benchmark serves as a tool for systems and States to evaluate the impact on microbial risk of proposed changes in disinfection practice. EPA established the disinfection benchmark under the IESWTR and LT1ESWTR for the Stage 1 M–DBP rules, as recommended by the Stage 1 M–DBP Advisory Committee. Today's proposal extends disinfection benchmark requirements to apply to the Stage 2 M–DBP rules.

Under the proposed LT2ESWTR, the disinfection benchmark procedure involves a system charting levels of *Giardia lamblia* and virus inactivation at least once per week over a period of at least one year. This creates a profile of inactivation performance that the System must use to determine a baseline or benchmark of inactivation against which proposed changes in disinfection practice can be measured. Only certain systems are required to develop profiles and keep them on file for State review during sanitary surveys. When those systems that are required to develop a profile plan a significant change in disinfection practice (defined later in this section), they must submit the profile and an analysis of how the proposed change will affect the current disinfection benchmark to the State for review.

Systems that developed disinfection profiles under the IESWTR or LT1ESWTR and have not made significant changes in their disinfection practice or changed sources are not required to collect additional operational data to create disinfection profiles under the LT2ESWTR. Systems that produced a disinfection profile for *Giardia lamblia* but not viruses under the IESWTR or LT1ESWTR may be required to develop a profile for viruses under the LT2ESWTR. Where a previously developed *Giardia lamblia* profile is acceptable, systems may develop a virus profile using the same operational data (*i.e.*, CT values) on which the *Giardia lamblia* profile is based. Spreadsheets developed by EPA and States automatically calculate *Giardia lamblia* and virus profiles using the same operational data. EPA believes that virus profiling is necessary because many of the disinfection processes that systems will select to comply with the Stage 2 DBPR and LT2ESWTR (*e.g.*, chloramines, UV, MF/UF) are relatively less effective against viruses than *Giardia lamblia* in comparison to free chlorine.

The disinfection benchmark provisions contain three major components: (a) Applicability requirements and schedule, (b) characterization of disinfection practice, and (c) State review of proposed changes in disinfection practice. Each of these components is discussed in the following paragraphs.

a. *Applicability and schedule.* Proposed disinfection profiling and benchmarking requirements apply to surface water systems only. Systems serving only ground water are not subject to the requirements of the LT2ESWTR. The determination of whether a surface water system is required to develop a disinfection profile is based on whether DBP levels (TTHM or HAA5) exceed specified values, described later in this section, and whether a system is required to monitor for *Cryptosporidium*. These criteria trigger profiling because they identify systems that may be required to make treatment changes under the Stage 2 DBPR or LT2ESWTR. Note that it is not practical to wait until a system has completed *Cryptosporidium* monitoring to identify which systems should prepare a disinfection profile. A completed disinfection profile should be available at the point when a system is classified in a treatment bin and must begin developing plans to comply with any additional treatment requirements.

Unless the system developed a disinfection profile under the IESWTR or LT1ESWTR, all systems required to monitor for *Cryptosporidium* must develop *Giardia lamblia* and virus disinfection profiles under the LT2ESWTR. This includes all surface water systems except (1) systems that provide 5.5 log total treatment for *Cryptosporidium*, equivalent to meeting the treatment requirements of Bin 4 and (2) small systems (<10,000 people served) that do not exceed the *E. coli* trigger (see section IV.A for details). Systems not required to monitor for *Cryptosporidium* as a result of providing 5.5 log of treatment are not required to prepare disinfection profiles. However, small systems that do not exceed the *E. coli* trigger are required to prepare *Giardia lamblia* and virus disinfection profiles if one of the following criteria apply, based on DBP levels in their distribution systems:

(1)* TTHM levels in the distribution system, based on samples collected for compliance with the Stage 1 DBPR, are at least 80% of the MCL (0.064 mg/L) at any Stage 1 DBPR sampling point based on a locational running annual average (LRAA).

(2)* HAA5 levels in the distribution system, based on the samples collected for compliance with the Stage 1 DBPR, are at least 80% of the MCL (0.048 mg/L) at any Stage 1 DBPR sampling point based on an LRAA.

*These criteria only apply to systems that are required to comply with the DBP rules, *i.e.*, community and non-transient non-community systems.

Table IV–22 presents a summary schedule of the required deadlines for disinfection profiling activities, categorized by system size and whether a small system is required to monitor for *Cryptosporidium*. The deadlines are based on the expectation that a system should have a disinfection profile at the time the system is classified in a *Cryptosporidium* treatment bin under LT2ESWTR and/or has determined the need to make treatment changes for the Stage 2 DBPR. Systems have three years from this date, with a possible two year extension for capital improvements if granted by the State, within which to complete their evaluation, design, and implementation of treatment changes to meet the requirements of the LT2ESWTR and the Stage 2 DBPR.

TABLE IV–22.—SCHEDULE OF IMPLEMENTATION DEADLINES RELATED TO DISINFECTION PROFILING [1]

Activity	Systems serving ≥10,000 people [2]	Systems serving <10,000 people	
		Required to monitor for *Cryptosporidium*	Not required to monitor for *Cryptosporidium* [2 3 6]
Complete 1 year of *E. coli* monitoring	NA	42	42
Determine whether required to profile based on DBP levels and notify State [6]	NA	NA	42
Begin disinfection profiling [4]	24	54	42
Complete *Cryptosporidium* monitoring	30	60	NA
Complete disinfection profiling based on at least one year's data [5]	36	66	54

[1] Numbers in table indicate months following promulgation of the LT2ESWTR.
[2] Systems providing a total of 5.5 log *Cryptosporidium* treatment (equivalent to meeting Bin 4 treatment requirements) are not required to develop disinfection profiles.
[3] Systems serving fewer than 10,000 people are not required to monitor for *Cryptosporidium* if mean *E. coli* levels are less than 10/100 mL for systems using lake/reservoir sources or less than 50/100 mL for systems using flowing stream sources.
[4] Unless system has existing disinfection profiling data that are acceptable.
[5] This deadline coincides with the start of the 3 year period at the end of which compliance with the LT2ESWTR and Stage 2 DBPR is required.
[6] Not required to conduct profiling unless TTHM or HAA5 exceeds trigger values of 80% of MCL at any sampling point based on LRAA.

As described in the next section, systems can meet profiling requirements under the proposed LT2ESWTR using previously collected data (*i.e.*, grandfathered data). Use of grandfathered data is allowed if the system has not made a significant change in disinfection practice or changed sources since the data were collected. This will permit most systems that prepared a disinfection profile under the IESWTR or the LT1ESWTR to avoid collecting any new operational data to develop profiles under the LT2ESWTR.

The locational running annual average (LRAA) of TTHM and HAA5 levels used by small systems that do not monitor for *Cryptosporidium* to determine whether profiling is required must be based on one year of DBP data collected during the period following promulgation of the LT2ESWTR, or as determined by the State. By the date indicated in Table IV–22, these systems must report to the State on their DBP LRAAs and whether the disinfection profiling requirements apply. If either DBP LRAA meets the criteria specified previously, the system must begin disinfection profiling by the date proposed in Table IV–22.

b. *Developing the disinfection profile and benchmark.* Under the LT2ESWTR, a disinfection profile consists of a compilation of *Giardia lamblia* and virus log inactivation levels computed at least weekly over a period of at least one year, as based on operational and water quality data (disinfectant residual concentration(s), contact time(s), temperature(s), and, where necessary, pH). The system may create the profile by conducting new weekly (or more frequent) monitoring and/or by using

grandfathered data. A system that created a *Giardia lamblia* disinfection profile under the IESWTR or LT1ESWTR may use the operational data collected for the *Giardia lamblia* profile to create a virus disinfection profile.

Grandfathered data are those operational data that a system has previously collected at a treatment plant during the course of normal operation. Those systems that have all the necessary information to determine profiles using existing operational data collected prior to the date when the system is required to begin profiling may use these data in developing profiles. However, grandfathered data must be substantially equivalent to operational data that would be collected under this rule. These data must be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

To develop disinfection profiles under this rule, systems are required to exercise one of the following three options:

Option 1—Systems conduct monitoring at least once per week following the process described later in this section.

Option 2—Systems that conduct monitoring under this rule, as described under Option 1, can also use one or two years of acceptable grandfathered data, in addition to one year of new operational data, in developing the disinfection profile.

Option 3—Systems that have at least one year of acceptable existing operational data are not required to conduct new monitoring to develop the disinfection profile under this rule. Instead, they can use a disinfection profile based on one to three years of grandfathered data.

Process to be followed by PWS for developing the disinfection profile:

—Measure disinfectant residual concentration (C, in mg/L) before or at the first customer and just prior to each additional point of disinfectant addition, whether with the same or a different disinfectant.
—Determine contact time (T, in minutes) for each residual disinfectant monitoring point during peak flow conditions. T could be based on either a tracer study or assumptions based on contactor basin geometry and baffling. However, systems must use the same method for both grandfathered data and new data.
—Measure water temperature (°C) (for disinfectants other than UV).
—Measure pH (for chlorine only).

To determine the weekly log inactivation, the system must convert operational data from one day each week to the corresponding log inactivation values for *Giardia lamblia* and viruses. The procedure for *Giardia lamblia* is as follows:

—Determine CT_{calc} for each disinfection segment.
—Determine $CT_{99.9}$ (*i.e.*, 3 log inactivation) from tables in the SWTR (40 CFR 141.74) using temperature (and pH for chlorine) for each disinfection segment. States can allow an alternate calculation procedure (*e.g.*, use of a spreadsheet).
—For each segment, log inactivation = $(CT_{calc}/CT_{99.9}) \times 3.0$.
—Sum the log inactivation values for each segment to get the log inactivation for the day (or week).

For calculating the virus log inactivation, systems should use the procedures approved by States under the IESWTR or LT1ESWTR. Log inactivation benchmark is calculated as follows:

—Determine the calendar month with the lowest log inactivation.
—The lowest month becomes the critical period for that year.
—If acceptable data from multiple years are available, the average of critical periods for each year becomes the benchmark.
—If only one year of data is available, the critical period for that year is the benchmark.

c. *State review.* If a system that is required to produce a disinfection profile proposes to make a significant change in disinfection practice, it must calculate *Giardia lamblia* and virus inactivation benchmarks and must notify the State before implementing such a change. Significant changes in disinfection practice are defined as (1) moving the point of disinfection (this is not intended to include routine seasonal changes already approved by the State), (2) changing the type of disinfectant, (3) changing the disinfection process, or (4) making other modifications designated as significant by the State. When notifying the State, the system must provide a description of the proposed change, the disinfection profiles and inactivation benchmarks for *Giardia lamblia* and viruses, and an analysis of how the proposed change will affect the current inactivation benchmarks. In addition, the system should have disinfection profiles and, if applicable, inactivation benchmarking documentation, available for the State to review as part of its periodic sanitary survey.

EPA developed for the IESWTR, with stakeholder input, the Disinfection Profiling and Benchmarking Guidance Manual (USEPA 1999d). This manual provides guidance to systems and States on the development of disinfection profiles, identification and evaluation of significant changes in disinfection practices, and considerations for setting an alternative benchmark. If necessary, EPA will produce an addendum to reflect changes in the profiling and benchmarking requirements necessary to comply with LT2ESWTR.

2. How Was This Proposal Developed?

A fundamental premise in the development of the M–DBP rules is the concept of balancing risks between DBPs and microbial pathogens. Disinfection profiling and benchmarking were established under the IESWTR and LT1ESWTR, based on a recommendation by the Stage 1 M–DBP Federal Advisory Committee, to ensure that systems maintained adequate control of pathogen risk as they reduced risk from DBPs. Today's proposal would extend disinfection benchmarking requirements to the LT2ESWTR.

EPA believes this extension is necessary because some systems will make significant changes in their current disinfection practice to meet more stringent limits on TTHM and HAA5 levels under the Stage 2 DBPR and additional *Cryptosporidium* treatment requirements under the LT2ESWTR. In order to ensure that these systems continue to provide adequate protection against the full spectrum of microbial pathogens, it is appropriate for systems and States to evaluate the effects of such treatment changes on microbial drinking water quality. The disinfection benchmark serves as a tool for making such evaluations.

EPA projects that to comply with the Stage 2 DBPR, systems will make changes to their disinfection practice, including switching from free chlorine to chloramines and, to a lesser extent, installing technologies like ozone, membranes, and UV. Similarly, to provide additional treatment for *Cryptosporidium*, some systems will install technologies like UV, ozone, and microfiltration. While these processes are all effective disinfectants, chloramines are a weaker disinfectant than free chlorine for *Giardia lamblia*. Ozone, UV, and membranes can provide highly effective treatment for *Giardia lamblia*, but they, as well as chloramines, are less efficient for treating viruses than free chlorine, relative to their efficacy for *Giardia lamblia*. Because of this, a system switching from free chlorine to one of these alternative disinfection

technologies could experience a reduction in the level of virus and/or *Giardia lamblia* (for chloramines) treatment it is achieving. Consequently, EPA believes that systems making significant changes in their disinfection practice under the Stage 2 M–DBP rules should assess the impact of these changes with disinfection benchmarks for *Giardia lamblia* and viruses.

Changes in the proposed benchmarking requirements under the LT2ESWTR in comparison to IESWTR requirements include decreasing the frequency of calculating CT values for the disinfection profile from daily to weekly and requiring all systems to prepare a profile for viruses as well as *Giardia lamblia*. The proposal of a weekly frequency for CT calculations was made to accommodate existing profiles from small systems, which are required to make weekly CT calculations for profiling under the LT1ESWTR. As described earlier, EPA would like for systems that have prepared a disinfection profile under the IESWTR or LT1ESWTR and have not subsequently made significant changes in disinfection practice to be able to grandfather this profile for the LT2ESWTR. Allowing weekly calculation of CT values under the LT2ESWTR will make this possible.

The IESWTR and LT1ESWTR required virus inactivation profiling only for systems using ozone or chloramine as their primary disinfectant. However, as noted earlier, EPA has projected that under the Stage 2 DBPR and LT2ESWTR, systems will switch from free chlorine to disinfection processes like chloramines, UV, ozone, and microfiltration. The efficiency of these processes for virus treatment relative to protozoa treatment is lower in comparison to free chlorine. As a result, a disinfection benchmark for *Giardia lamblia* would not necessarily provide an indication of the level or adequacy of treatment for viruses. Consequently, EPA believes it is appropriate for systems to develop profiles for both *Giardia lamblia* and viruses. Moreover, developing a profile for viruses involves a minimal increase in effort and no additional data collection for those systems that have disinfection profiles for *Giardia lamblia*. Systems will use the same calculated CT values for viruses as would be used for the *Giardia lamblia* profile.

The strategy of disinfection profiling and benchmarking stemmed from data provided to the Stage1 M–DBP Advisory Committee, in which the baseline of microbial inactivation (expressed as logs of *Giardia lamblia* inactivation) demonstrated high variability. Inactivation varied by several logs (*i.e.*, orders of magnitude) on a day-to-day basis at particular treatment plants and by as much as tens of logs over a year due to changes in water temperature, flow rate, seasonal changes, pH, and disinfectant demand. There were also differences between years at individual plants. To address these variations, M–DBP stakeholders developed the procedure of profiling a plant's inactivation levels over a period of at least one year, and then establishing a benchmark of minimum inactivation as a way to characterize disinfection practice.

Benchmarking of inactivation levels, an assessment of the impact of proposed changes on the level of microbial inactivation of *Giardia lamblia* and viruses, and State review prior to approval of substantial changes in treatment are important steps in avoiding conditions that present an increase in microbial risk. In its assessment of the microbial risk associated with the proposed changes, States could consider site-specific knowledge of the watershed and hydrologic factors as well as variability, flexibility and reliability of treatment to ensure that treatment for both protozoan and viral pathogens is appropriate.

EPA emphasizes that benchmarking is not intended to function as a regulatory standard. Rather, the objective of the disinfection benchmark is to facilitate interactions between the States and systems for the purpose of assessing the impact on microbial risk of proposed significant changes to current disinfection practices. Final decisions regarding levels of disinfection for *Giardia lamblia* and viruses beyond those required by the SWTR that are necessary to protect public health will continue to be left to the States. For this reason EPA has not mandated specific evaluation protocols or decision matrices for analyzing changes in disinfection practice. EPA, however, will provide support to the States in making these analyses through the issuance of guidance.

3. Request for Comments

EPA requests comment on the proposed provisions of the inactivation profiling and benchmarking requirement.

E. Additional Treatment Technique Requirements for Systems With Uncovered Finished Water Storage Facilities

1. What Is EPA Proposing Today?

EPA is proposing requirements for systems with uncovered finished water storage facilities. The proposed rule requires that systems with uncovered finished water storage facilities must (1) cover the uncovered finished water storage facility, or (2) treat storage facility discharge to the distribution system to achieve a 4 log virus inactivation, unless (3) the system implements a State-approved risk mitigation plan that addresses physical access and site security, surface water runoff, animal and bird waste, and ongoing water quality assessment, and includes a schedule for plan implementation. Where applicable, the plans should account for cultural uses by Indian Tribes.

Systems must notify the State if they use uncovered finished water storage facilities no later than 2 years following LT2ESWTR promulgation. Systems must cover or treat uncovered finished facilities or have a State-approved risk mitigation plan within 3 years following LT2ESWTR promulgation, with the possibility of a two year extension granted by States for systems making capital improvements. Systems seeking approval for a risk mitigation plan must submit the plan to the State within 2 years following LT2ESWTR promulgation.

These provisions apply to uncovered tanks, reservoirs, or other facilities where water is stored after it has undergone treatment to satisfy microbial treatment technique requirements for *Giardia lamblia*, *Cryptosporidium*, and viruses. In most cases, this refers to storage of water following all filtration steps, where required, and primary disinfection.

2. How Was This Proposal Developed?

Today's proposal is intended to mitigate the water quality degradation and increased health risks that can result from uncovered finished water storage facilities. In addition, these proposed requirements for uncovered finished water storage facilities are consistent with recommendations of the Stage 2 M–DBP Advisory Committee in the Agreement in Principle (USEPA 2000a).

The use of uncovered finished water storage facilities has been questioned since 1930 due to their susceptibility to contamination and subsequent threats to public health (LeChevallier *et al.* 1997). Many potential sources of contamination can lead to the degradation of water quality in uncovered finished water storage facilities. These include surface water runoff, algal growth, insects and fish, bird and animal waste, airborne deposition, and human activity.

Algal blooms are the most common problem in open reservoirs and can become a public health risk, as they increase the presence of bacteria in the water. Algae growth also leads to the formation of disinfection byproducts and causes taste and odor problems. Some algae produce toxins that can induce headache, fever, diarrhea, abdominal pain, nausea, and vomiting. Bird and animal wastes are also common and significant sources of contamination. These wastes may carry microbial contaminants such as coliform bacteria, viruses, and human pathogens, including Vibrio cholera, Salmonella, Mycobacteria, Typhoid, *Giardia lamblia*, and *Cryptosporidium* (USEPA 1999e). Microbial pathogens are found in surface water runoff, along with agricultural chemicals, automotive wastes, turbidity, metals, and organic matter (USEPA 1999e, LeChevallier *et al.* 1997).

In an effort to minimize contamination, systems have implemented various controls such as reservoir covers and liners, regular draining and washing, security and monitoring, bird and insect control programs, and drainage design to prevent surface runoff from entering the facility (USEPA 1999e).

A number of studies have evaluated the degradation of water quality in uncovered finished water storage facilities. LeChevallier *et al.* (1997) compared influent and effluent samples from six uncovered finished water storage reservoirs in New Jersey for a one year period. There were significant increases in the turbidity, particle count, total coliform, fecal coliform, and heterotrophic plate count bacteria in the effluent relative to the influent. Of particular concern were fecal coliforms, which were detected in 18 percent of effluent samples (no influent samples were positive for coliforms). Fecal coliforms are used as an indicator of the potential for contamination by pathogens. Giardia and/or *Cryptosporidium* were detected in 15% of inlet samples and 25% of effluent samples, demonstrating a significant increase in the effluent. There was a significant decrease in the chlorine residual concentration in some effluent samples.

Increases in algal cells, heterotrophic plate count (HPC) bacteria, turbidity, color, particle counts, and biomass, and decreases in residual chlorine levels, have been reported in other studies of uncovered finished water reservoirs as well (Pluntze 1974, AWWA Committee 1983, Silverman *et al.* 1983). Researchers have shown that small mammals, birds, fish, and algal growth contribute to the microbial degradation of an open finished water reservoir (Graczyk *et al.* 1996, Geldreich 1990, Fayer and Ungar 1986, Current 1986).

As described in section II, the IESWTR and LT1ESWTR require water systems to cover all new reservoirs, holding tanks, or other storage facilities for finished water. However, these rules do not require systems to cover existing finished water storage facilities. EPA stated in the preamble to the final IESWTR (63 FR 69494, December 16, 1998) (USEPA 1998a) that with respect to requirements for existing uncovered finished water storage facilities, the Agency needed more time to collect and analyze additional information to evaluate regulatory impact. The IESWTR preamble affirmed that EPA would consider whether to require the covering of existing storage facilities during the development of subsequent microbial regulations when additional data to estimate national costs were available.

Since promulgation of the IESWTR, EPA has collected sufficient data to estimate national cost implications of regulatory control strategies for uncovered finished water storage facilities. Based on information provided by States, EPA estimates that there are approximately 138 uncovered finished water storage facilities in the United States and territories, not including reservoirs that systems currently plan to cover or take off-line. Costs for covering these storage facilities or treating the effluent, consistent with today's proposed requirements, are presented in section VI of this preamble and in the Economic Analysis for the LT2ESWTR (USEPA 2003a). Briefly, total capital costs were estimated as $64.4 million, resulting in annualized present value costs of $5.4 million at a three percent discount rate and $6.4 million at a seven percent discount rate.

Based on the findings of studies cited in this section, EPA continues to be concerned about contamination occurring in uncovered finished water storage facilities. Therefore, as recommended by the Advisory Committee, EPA is proposing control measures for all systems with uncovered finished water storage facilities. This proposal is intended to represent a balanced approach, recognizing both the potentially significant but uncertain risks associated with uncovered finished water storage facilities and the substantial costs of either covering them or building alternative storage. Today's proposal allows systems to treat the storage facility effluent instead of providing a cover. Alternatively, States may determine that existing risk mitigation is adequate, provided a system implements a risk mitigation plan as described in this section.

3. Request for Comments

EPA requests comment on the proposed requirements pertaining to uncovered finished water storage facilities. Specifically, the Agency would like comment on the following issues, and requests that comments include available supporting data or other technical information:

- Is it appropriate to allow systems with uncovered finished water storage facilities to implement a risk management plan or treat the effluent to inactivate viruses instead of covering the facility?
- If systems treat the effluent of an uncovered finished water storage facility instead of covering it, should systems be required to inactivate *Cryptosporidium* and *Giardia lamblia*, since these protozoa have been found to increase in uncovered storage facilities?
- Additional information on contamination or health risks that may be associated with uncovered finished water storage facilities.
- Additional data on how climatological conditions affect water quality, including daily fluctuations in the stability of the water related to corrosion control.
- The definition of an uncovered finished water storage facility in 40 CFR 141.2 is a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and is open to the atmosphere. There is a concern that this definition may not include certain systems using what would generally be considered an uncovered finished water storage facility. An example is a system that applies a corrosion inhibitor compound to the effluent of an uncovered storage facility where water is stored after filtration and primary disinfection. In this case, the system may claim that the corrosion inhibitor constitutes additional treatment and, consequently, the reservoir does not meet EPA's definition of an uncovered finished water storage facility. EPA requests comment on whether the definition of an uncovered finished water storage facility should be revised to specifically include systems that apply a treatment such as corrosion control to water stored in an uncovered reservoir after the water has undergone filtration, where required, and primary disinfection.

F. Compliance Schedules

Today's proposal includes deadlines for public water systems to comply with

the proposed monitoring, reporting, and treatment requirements. These deadlines stem from the microbial framework approach of the proposed LT2ESWTR, which involves a system-specific risk characterization through monitoring to determine the need for additional treatment.

1. What Is EPA Proposing Today?

a. Source water monitoring.

i. Filtered systems. Under today's proposal, filtered systems conduct source water *Cryptosporidium* monitoring for the purpose of being classified in one of four risk bins that determine the extent of any additional treatment requirements. Small filtered systems first monitor for *E. coli* as a screening analysis and are only required to monitor for *Cryptosporidium* if the mean *E. coli* level exceeds specified trigger values. Note that systems that currently provide or will provide a total of at least 5.5 log of treatment for *Cryptosporidium* are exempt from monitoring requirements.

Large surface water systems (serving at least 10,000 people) that filter must sample at least monthly for *Cryptosporidium*, *E. coli*, and turbidity in their source water for 24 months, beginning 6 months after promulgation of the LT2ESWTR. Large systems must submit a sampling schedule to their primacy agency (in this case, EPA) no later than 3 months after promulgation of the LT2ESWTR.

Small surface water systems (fewer than 10,000 people served) that filter must conduct biweekly *E. coli* sampling in their source water for 1 year, beginning 30 months after LT2ESWTR promulgation. States may designate an alternate indicator monitoring strategy based on EPA guidance, but compliance schedules will not change. Small systems that exceed the indicator trigger value (*i.e.*, mean *E. coli* > 10/100 mL for lake/reservoir sources or > 50/100 mL for flowing stream sources) must conduct source water *Cryptosporidium* sampling twice-per-month for 1 year, beginning 48 months after LT2ESWTR promulgation (*i.e.*, beginning 6 months following the completion of *E. coli* sampling). Small systems must submit an *E. coli* sampling schedule to their primacy agency no later than 27 months after LT2ESWTR promulgation. If *Cryptosporidium* monitoring is required, small systems must submit a *Cryptosporidium* sampling schedule no later than 45 months after LT2ESWTR promulgation.

Large systems must carry out a second round of source water monitoring beginning 108 months after LT2ESWTR promulgation, which is 6 years after initial bin classification. Similarly, small systems must conduct a second round of indicator monitoring (*E. coli* or other as designated by the State) beginning 138 months after LT2ESWTR promulgation, which is 6 years after their initial bin classification. Small systems that exceed the indicator trigger value in the second round of indicator monitoring must conduct a second round of *Cryptosporidium* monitoring, beginning 156 months after LT2ESWTR promulgation.

Compliance dates for filtered systems are summarized in Table IV–23.

TABLE IV–23.—SUMMARY OF COMPLIANCE DATES FOR FILTERED SYSTEMS

System type	Requirement	Compliance date
Large Systems (serve ≥10,000 people).	Submit sampling schedule [1,2]	No later than 3 months after promulgation.
	Source water *Cryptosporidium*, *E. coli* and turbidity monitoring.	Begin monthly monitoring 6 months after promulgation for 24 months.
	Comply with additional *Cryptosporidium* treatment requirements.	No later than 72 months after promulgation.[3]
	Second round of source water *Cryptosporidium*, *E. coli*, and turbidity monitoring [2].	Begin monthly monitoring 108 months after promulgation for 24 months.
Small Systems (serve <10,000 people).	Submit *E. coli* sampling schedule[2]	No later than 27 months after promulgation.
	Source water *E. coli* monitoring	Begin biweekly monitoring 30 months after promulgation for 1 year.
	Second round of source water *E. coli* monitoring [2]	Begin biweekly monitoring 138 months after promulgation for 1 year.
	Additional requirements if indicator (*e.g.*, *E. coli*) trigger level is exceeded[4]	
	Submit *Cryptosporidium* sampling schedule [1,2]	No later than 45 months after promulgation.
	Source water *Cryptosporidium* monitoring	Begin twice-per-month monitoring no later than 48 months after promulgation for 1 year.
	Comply with additional *Cryptosporidium* treatment requirements.	No later than 102 months after promulgation.[3, 5]
	Second round of source water *Cryptosporidium* monitoring.	Begin twice-per-month monitoring no later than 156 months after promulgation for 1 year.

[1] Systems may be eligible to use previously collected (grandfathered) data to meet LT2ESWTR requirements if specified quality control criteria are met (described in section IV.A.1.d).
[2] Systems are not required to monitor if they will provide at least 5.5 log *Cryptosporidium* treatment and notify EPA or the State.
[3] States may grant up to an additional two years for systems making capital improvements.
[4] If the *E. coli* annual mean concentration exceeds 10/100 mL for systems using lakes/reservoir sources or exceeds 50/100 mL for systems using flowing stream sources, *Cryptosporidium* monitoring is required.
[5] Systems that do not exceed the *E. coli* trigger level are classified in Bin 1 and are not required to provide *Cryptosporidium* treatment beyond LT1ESWTR levels.

ii. *Unfiltered systems.* Surface water systems that do not filter and meet the criteria for avoidance of filtration (40 CFR 141.71) (*i.e.*, unfiltered systems) are required to conduct source water *Cryptosporidium* monitoring to determine if their mean source water *Cryptosporidium* level exceeds 0.01 oocysts/L. There is no *E. coli* screening analysis available to small unfiltered systems. However, both large and small unfiltered systems conduct

Cryptosporidium monitoring on the same schedule as filtered systems of the same size. Note that unfiltered systems that currently provide or will provide a total of at least 3 log *Cryptosporidium* inactivation are exempt from monitoring requirements.

Large unfiltered systems (serving at least 10,000 people) must conduct at least monthly *Cryptosporidium* sampling for 24 months, beginning 6 months after LT2ESWTR promulgation. Small unfiltered systems (serving fewer than 10,000 people) must conduct at least twice-per-month *Cryptosporidium* sampling for 12 months, beginning 48 months after LT2ESWTR promulgation. Large systems must submit a *Cryptosporidium* sampling schedule to EPA no later than 3 months after LT2ESWTR promulgation, and small systems must submit a sampling schedule to their State no later than 45 months after LT2ESWTR promulgation.

Unfiltered systems are required to conduct a second round of *Cryptosporidium* monitoring on the same schedule as filtered systems of the same size. Large systems must carry out a second round of *Cryptosporidium* monitoring, beginning 108 months after LT2ESWTR promulgation. Small systems must perform a second round of *Cryptosporidium* monitoring, beginning 156 months after LT2ESWTR promulgation.

Compliance dates for unfiltered systems are summarized in Table IV–24.

TABLE IV–24.—SUMMARY OF COMPLIANCE DATES FOR UNFILTERED SYSTEMS

System type	Requirement	Compliance date
Large Systems (serve ≥10,000 people).	Submit sampling schedule [1]	No later than 3 months after promulgation.
	Source water *Cryptosporidium* monitoring	Begin monthly monitoring [6 months after promulgation for 24 months.
	Comply with *Cryptosporidium* inactivation requirements.	No later than 72 months after promulgation.[2]
	Second round of source water *Cryptosporidium* monitoring.	Begin monthly monitoring 108 months after promulgation for 24 months.
Small Systems (serve < 10,000 people).	Submit sampling schedule [1]	No later than 45 months after promulgation.
	Source water *Cryptosporidium* monitoring	Begin twice-per-month monitoring no later than 48 months after promulgation for 1 year.
	Comply with *Cryptosporidium* inactivation requirements.	No later than 102 months after promulgation.[2]
	Second round of source water *Cryptosporidium* monitoring.	Begin twice-per-month monitoring no later than 156 months after promulgation for 1 year.

[1] Systems may be eligible to use previously collected (grandfathered) data to meet LT2ESWTR requirements if specified quality control criteria are met (described in section IV.A.1.d).
[2] States may grant up to an additional two years for systems making capital improvements.

b. *Treatment requirements.* Filtered systems must determine their bin classification and unfiltered systems must determine their mean source water *Cryptosporidium* level within 6 months of the scheduled month for collection of their final *Cryptosporidium* sample in the first round of monitoring. This 6 month period provides time for systems to receive all sample analysis results from the laboratory, analyze the data, and work with their primacy agency.

Filtered systems have 3 years following initial bin classification to meet any additional *Cryptosporidium* treatment requirements. This equates to compliance dates of 72 months after LT2ESWTR promulgation for large systems and 102 months after LT2ESWTR promulgation for small systems (see Table IV–23). Unfiltered systems must comply with *Cryptosporidium* treatment requirements on the same schedule as filtered systems of the same size (see Table IV–24). The State may grant systems an additional two years to comply when capital investments are necessary, as specified in the Safe Drinking Water Act (section 1412(b)(10)).

Systems with uncovered finished water storage facilities are required to comply with the provisions described in section IV.E by 36 months following LT2ESWTR promulgation, with the possibility of a 2 year extension granted by the State for systems making capital improvements. Systems seeking approval for a risk mitigation plan must submit the plan to the State within 24 months following LT2ESWTR promulgation.

Systems must comply with additional *Cryptosporidium* treatment requirements by implementing one or more treatment processes or control strategies from the microbial toolbox. Most of the toolbox components require submission of documentation to the State demonstrating compliance with design and/or implementation criteria required to receive credit. Compliance dates for reporting requirements associated with microbial toolbox components are presented in detail in section IV.J, Reporting and Recordkeeping Requirements.

c. *Disinfection benchmarks for Giardia lamblia and viruses.* Today's proposed LT2ESWTR includes disinfection profiling and benchmarking requirements, which consist of three major components: applicability determination, characterization of disinfection practice, and State review of proposed changes in disinfection practice. Each of these components is discussed in detail in section IV.D. Compliance deadlines associated with each of these components, including associated reporting requirements, are stated in section IV.J, Reporting and Recordkeeping Requirements.

2. How Was This Proposal Developed?

The compliance dates in today's proposal reflects the risk-targeted approach of the proposed LT2ESWTR, wherein additional treatment requirements are based on a system specific risk characterization as determined through source water monitoring. Additionally, they are designed to allow for systems to simultaneously comply with the LT2ESWTR and Stage 2 DBPR in order to balance risks in the control of microbial pathogens and DBPs. These dates are consistent with recommendations from the Stage 2 M–DBP Federal Advisory Committee.

Under the LT2ESWTR, large systems will sample for *Cryptosporidium* for a period of two years in order to

characterize source water pathogen levels and capture a degree of annual variability. To expedite the date by which systems will provide additional treatment where high risk source waters are identified, large system *Cryptosporidium* monitoring will begin six months after promulgation of the LT2ESWTR. Upon completion of *Cryptosporidium* monitoring, systems will have six months to work with their primacy agency to determine their bin classification. Beginning at this point, which is three years following LT2ESWTR promulgation, large systems will have three years to implement the treatment processes or control strategies necessary to comply with any additional treatment requirements stemming from bin classification.

Other large system compliance dates in areas like approval of grandfathered monitoring data, disinfection profiling and benchmarking, and reporting deadlines associated with microbial toolbox components all stem from the *Cryptosporidium* monitoring and treatment compliance schedule.

With respect to small systems under the LT2ESWTR, EPA is proposing that small systems first monitor for *E. coli* as a screening analysis in order to reduce the number of small systems that incur the cost of *Cryptosporidium* monitoring. However, due to limitations in available data, the Agency has determined that it is necessary to use data generated by large systems under the LT2ESWTR to confirm or refine the *E. coli* indicator criteria that will trigger small system *Cryptosporidium* monitoring. Consequently, small system indicator monitoring will begin at the conclusion of large system monitoring. This approach was recommended by the Advisory Committee.

Accordingly, small systems will monitor for *E. coli* for one year, beginning 30 months after LT2ESWTR promulgation. Following this, small systems will have six months to determine if they are required to monitor for *Cryptosporidium* and, if so, contract with an approved analytical laboratory. *Cryptosporidium* monitoring by small systems will be conducted for one year, which, when added to the one year of *E. coli* monitoring, equals two years of source water monitoring. This is equivalent to the time period large systems spend in source water monitoring.

The time periods associated with bin assignment and compliance with additional treatment requirements for small systems are the same as those proposed for large systems. Specifically, small systems will have six months to work with their States to determine their bin classification following the conclusion of *Cryptosporidium* sampling. From this point, which is 5.5 years after LT2ESWTR promulgation, small systems have three years to meet any additional treatment requirements resulting from bin classification. States can grant additional time to small systems for compliance with treatment technique requirements through granting exemptions (see SDWA section 1416).

3. Request for Comments

EPA requests comments on the treatment technique compliance schedules for large and small systems in today's proposal, including the following issues:

Time Window Between Large and Small System Monitoring

Under the current proposal, small filtered system *E. coli* monitoring begins in the month following the end of large system *Cryptosporidium*, *E. coli*, and turbidity monitoring. EPA plans to evaluate large system monitoring results on an ongoing basis as the data are reported to determine if any refinements to the *E. coli* levels that trigger small system *Cryptosporidium* monitoring are necessary. If such refinements were deemed appropriate, EPA would issue guidance to States, which can establish alternative trigger values for small system monitoring under the LT2ESWTR.

This implementation schedule does not leave any time between the end of large system monitoring and the initiation of small system monitoring. Consequently, if it is necessary to provide guidance on alternative trigger values prior to when small system monitoring begins, such guidance would be based on less than the full set of large system results (*e.g.*, first 18 months of large system data). EPA requests comment on whether an additional time window between the end of large system monitoring and the beginning of small system monitoring is appropriate and, if so, how long such a window should be.

Implementation Schedule for Consecutive Systems

The Stage 2 M–DBP Agreement in Principle (65 FR 83015, December 29, 2000) (USEPA 2000a) continues the principle of simultaneous compliance to address microbial pathogens and disinfection byproducts. Systems are generally expected to address LT2ESTWR requirements concurrently with those of the Stage 2 DBPR (as noted earlier, the Stage 2 DBPR is scheduled to be proposed later this year and to be promulgated at the same time as the LT2ESWTR).

As with the LT2ESWTR, small water systems (< 10,000 served) generally begin monitoring and must be in compliance with the Stage 2 DBPR at a date later than that for large systems. However, the Advisory Committee recommended that small systems that buy/receive from or sell/deliver finished water to a large system (that is, they are part of the same ''combined distribution system'') comply with Stage 2 DBPR requirements on the same schedule as the largest system in the combined distribution system. This approach is intended to ensure that systems consider impacts throughout the combined distribution system when making compliance decisions (*e.g,* selecting new technologies or making operational modifications) and to facilitate all systems meeting the compliance deadlines for the rule.

The issue of combined distribution systems associated with systems buying and selling water is expected to be of less significance for the LT2ESWTR. The requirements of the LT2ESWTR apply to systems treating raw surface water and generally will not involve compliance steps when systems purchase treated water. Consequently, the compliance schedule for today's proposal does not address combined distribution systems. However, this proposed approach raises the possibility that a small system treating surface water and selling it to a large system could be required to take compliance steps at an earlier date under the Stage 2 DBPR than under the LT2ESWTR. While a small system in this situation could choose to comply with the LT2ESWTR on an earlier schedule, the two rules would not require simultaneous compliance. EPA requests comment on how this scenario should be addressed in the LT2ESWTR.

G. Public Notice Requirements

1. What Is EPA Proposing Today?

EPA is proposing that under the LT2ESWTR, a Tier 2 public notice will be required for violations of additional treatment requirements and a Tier 3 public notice will be required for violations of monitoring and testing requirements. Where systems violate LT2ESWTR treatment requirements, today's proposal requires the use of the existing health effects language for microbiological contaminant treatment technique violations, as stated in 40 CFR 141 Subpart Q, Appendix B.

2. How Was This Proposal Developed?

In 2000, EPA published the Public Notification Rule (65 FR 25982, May 4, 2000) (USEPA 2000d), which revised the general public notification regulations for public water systems in order to implement the public notification requirements of the 1996 SDWA amendments. This regulation established the requirements that public water systems must follow regarding the form, manner, frequency, and content of a public notice. Public notification of violations is an integral part of the public health protection and consumer right-to-know provisions of the 1996 SDWA Amendments.

Owners and operators of public water systems are required to notify persons served when they fail to comply with the requirements of a NPDWR, have a variance or exemption from the drinking water regulations, or are facing other situations posing a risk to public health. The public notification requirements divide violations into three categories (Tier 1, Tier 2 and Tier 3) based on the seriousness of the violations, with each tier having different public notification requirements.

EPA has limited its list of violations and situations routinely requiring a Tier 1 notice to those with a significant potential for serious adverse health effects from short term exposure. Tier 1 violations contain language specified by EPA that concisely and in non-technical terms conveys to the public the adverse health effects that may occur as a result of the violation. States and water utilities may add additional information to each notice, as deemed appropriate for specific situations. A State may elevate to Tier 1 other violations and situations with significant potential to have serious adverse health effects from short-term exposure, as determined by the State.

Tier 2 public notices address other violations with potential to have serious adverse health effects on human health. Tier 2 notices are required for the following situations:

- All violations of the MCL, maximum residual disinfectant level (MRDL) and treatment technique requirements, except where a Tier 1 notice is required or where the State determines that a Tier 1 notice is required; and
- Failure to comply with the terms and conditions of any existing variance or exemption.

Tier 3 public notices include all other violations and situations requiring public notice, including the following situations:

- A monitoring or testing procedure violation, except where a Tier 1 or 2 notice is already required or where the State has elevated the notice to Tier 1 or 2; and
- Operation under a variance or exemption.

The State, at its discretion, may elevate the notice requirement for specific monitoring or testing procedures from a Tier 3 to a Tier 2 notice, taking into account the potential health impacts and persistence of the violation.

As part of the IESWTR, EPA established health effects language for violations of treatment technique requirements for microbiological contaminants. EPA believes this language, which was developed with consideration of *Cryptosporidium* health effects, is appropriate for violations of additional *Cryptosporidium* treatment requirements under the LT2ESWTR.

3. Request for Comment

EPA requests comment on whether the violations of additional treatment requirements for *Cryptosporidium* under the LT2ESWTR should require a Tier 2 public notice and whether the proposed health effects language is appropriate.

H. Variances and Exemptions

SDWA section 1415 allows States to grant variances from national primary drinking water regulations under certain conditions; section 1416 establishes the conditions under which States may grant exemptions to MCL or treatment technique requirements. For the reasons presented in the following discussion, EPA has determined that systems will not be eligible for variances or exemptions to the requirements of the LT2ESWTR.

1. Variances

Section 1415 specifies two provisions under which general variances to treatment technique requirements may be granted:

(1) A State that has primacy may grant a variance to a system from any requirement to use a specified treatment technique for a contaminant if the system demonstrates to the satisfaction of the State that the treatment technique is not necessary to protect public health because of the nature of the system's raw water source. EPA may prescribe monitoring and other requirements as conditions of the variance (section 1415(a)(1)(B)).

(2) EPA may grant a variance from any treatment technique requirement upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant (section 1415(a)(3)).

EPA does not believe the first provision for granting a variance is applicable to the LT2ESWTR because *Cryptosporidium* treatment technique requirements under this rule account for the degree of source water contamination. Systems initially comply with the LT2ESWTR by conducting source water monitoring for *Cryptosporidium*. Filtered systems are required to provide additional treatment for *Cryptosporidium* only if the source water concentration exceeds a level where current treatment does not provide sufficient protection. All unfiltered systems are required to provide a baseline of 2 log inactivation of *Cryptosporidium* to achieve finished water risk levels comparable to filtered systems; however, unfiltered systems are required to achieve 3 log inactivation only if the source water level exceeds 0.01 oocysts/L.

The second provision for granting a variance is not applicable to the LT2ESWTR because the treatment technique requirements of this rule specify the degree to which systems must lower their source water *Cryptosporidium* level (*e.g.*, 4, 5, and 5.5 log reduction in Bins 2, 3, and 4, respectively). The LT2ESWTR provides broad flexibility in how systems achieve the required level of *Cryptosporidium* reduction, as shown in the discussion of the microbial toolbox in section VI.C Moreover, the microbial toolbox contains an option for Demonstration of Performance, under which States can award treatment credit based on the demonstrated efficiency of a treatment process in reducing *Cryptosporidium* levels. Thus, there is no need for this type of variance under the LT2ESWTR.

SDWA section 1415(e) describes small system variances, but these cannot be granted for a treatment technique for a microbial contaminant. Hence, small system variances are not allowed for the LT2ESWTR.

2. Exemptions

Under SDWA section 1416(a), a State may exempt any public water system from a treatment technique requirement upon a finding that (1) due to compelling factors (which may include economic factors such as qualification of the system as serving a disadvantaged community), the system is unable to comply with the requirement or implement measures to develop an alternative source of water supply; (2) the system was in operation on the effective date of the treatment technique requirement, or for a system that was not in operation by that date, no

reasonable alternative source of drinking water is available to the new system; (3) the exemption will not result in an unreasonable risk to health; and (4) management or restructuring changes (or both) cannot reasonably result in compliance with the Act or improve the quality of drinking water.

If EPA or the State grants an exemption to a public water system, it must at the same time prescribe a schedule for compliance (including increments of progress or measures to develop an alternative source of water supply) and implementation of appropriate control measures that the State requires the system to meet while the exemption is in effect. Under section 1416(b)(2)(A), the schedule shall require compliance as expeditiously as practicable (to be determined by the State), but no later than three years after the otherwise applicable compliance date for the regulations established pursuant to section 1412(b)(10). For public water systems that do not serve more than a population of 3,300 and that need financial assistance for the necessary improvements, EPA or the State may renew an exemption for one or more additional two-year periods, but not to exceed a total of six years.

A public water system shall not be granted an exemption unless it can establish that: (1) The system cannot meet the standard without capital improvements that cannot be completed prior to the date established pursuant to section 1412(b)(10); or (2) in the case of a system that needs financial assistance for the necessary implementation, the system has entered into an agreement to obtain financial assistance pursuant to section 1452 or any other Federal or state program; or (3) the system has entered into an enforceable agreement to become part of a regional public water system.

EPA believes that granting an exemption to the *Cryptosporidium* treatment requirements of the LT2ESWTR would result in an unreasonable risk to health. As described in section II.C, *Cryptosporidium* causes acute health effects, which may be severe in sensitive subpopulations and include risk of mortality. Moreover, the additional *Cryptosporidium* treatment requirements of the LT2ESWTR are targeted to systems with the highest degree of risk. Due to these factors, EPA is not proposing to allow exemptions under the LT2ESWTR.

3. Request for Comment

a. *Variances.* EPA requests comment on the determination that the provisions for granting variances are not applicable to the proposed LT2ESWTR, specifically including *Cryptosporidium* inactivation requirements for unfiltered systems.

In theory it would be possible for an unfiltered system to demonstrate raw water *Cryptosporidium* levels that were 3 log lower than the cutoff for bin 1 for filtered systems and, thus, that it may be providing comparable public health protection without additional inactivation. However, EPA has determined that in practice it is not currently economically or technologically feasible for systems to ascertain the level of *Cryptosporidium* at this concentration. This is due to the extremely large number and volume of samples that would be necessary to make this demonstration with sufficient confidence. Based on this determination and the *Cryptosporidium* occurrence data described in section III.C, EPA is not proposing to allow unfiltered systems to demonstrate raw water *Cryptosporidium* levels low enough to avoid inactivation requirements. EPA requests comment on this approach.

b. *Exemptions.* EPA requests comment on the determination that granting an exemption to the *Cryptosporidium* treatment requirements of the LT2ESWTR would result in an unreasonable risk to health.

I. Requirements for Systems To Use Qualified Operators

The SWTR established a requirement that each public water system using a surface water source or a ground water source under the direct influence of surface water must be operated by qualified personnel who meet the requirements specified by the State (40 CFR 141.70). The Stage 1 DBPR extended this requirement to include all systems affected by that rule, and required that States maintain a register of qualified operators (40 CFR 141.130(c)). While the proposed LT2ESWTR establishes no new requirements regarding the operation of systems by qualified personnel, the Agency would like to emphasize the important role that qualified operators play in delivering safe drinking water to the public. EPA encourages States that do not already have operator certification programs in effect to develop such programs. States should also review and modify, as required, their qualification standards to take into account new technologies (*e.g.*, ultraviolet disinfection) and new compliance requirements.

J. System Reporting and Recordkeeping Requirements

1. Overview

Today's proposal includes reporting and recordkeeping requirements associated with proposed monitoring and treatment requirements. As described earlier, systems must conduct source water monitoring to determine a treatment bin classification for filtered systems or a mean *Cryptosporidium* level for unfiltered systems. Systems with previously collected monitoring data may be able to use (*i.e.*, grandfather) those data in lieu of conducting new monitoring. Following source water monitoring, systems will be required to comply with any additional *Cryptosporidium* treatment requirements by implementing treatment and control strategies from a microbial toolbox of options. Systems must conduct a second round of source water monitoring six years after bin classification.

In addition, systems using uncovered finished water storage facilities must cover the facility or provide treatment unless the system implements a State-approved risk management strategy. Certain systems will be required to conduct disinfection profiling and benchmarking.

The proposed rule requires public water systems to submit schedules for *Cryptosporidium*, *E. coli*, and turbidity sampling at least 3 months before monitoring must begin. Source water sample analysis results must be reported not later than ten days after the end of first month following the month when the sample is collected. As described later, large systems (at least 10,000 people served) will report monitoring results from the initial round of monitoring directly to EPA through an electronic data system. Small systems will report monitoring results to the State. Both small and large systems will report monitoring results from the second round of monitoring to the State.

Systems must report a bin classification (filtered systems) or mean *Cryptosporidium* level (unfiltered systems) within six months following the month when the last sample in a particular round of monitoring is scheduled to be collected. If systems are required to provide additional treatment for *Cryptosporidium*, they must report regarding the use of microbial toolbox components. Systems must notify the State within 24 months following promulgation of the rule if they use uncovered finished water storage facilities. Systems must also make reports related to disinfection profiling and benchmarking. Reporting

requirements associated with these activities are summarized in Tables IV–25 to IV–28.

TABLE IV–25.— SUMMARY OF INITIAL LARGE FILTERED SYSTEM REPORTING REQUIREMENTS

You must report the following items	On the following schedule
Sampling schedule for *Cryptosporidium*, *E. coli*, and turbidity monitoring.	No later than 3 months after promulgation.
Results of *Cryptosporidium*, *E. coli*, and turbidity analyses	No later than 10 days after the end of the first month following the month in which the sample is collected.
Bin determination	No later than 36 months after promulgation.
Demonstration of compliance with additional treatment requirements.	Beginning 72 months after promulgation [1] (See table IV–34).
Disinfection profiling component reports	See Table IV–35.

[1] States may grant an additional two years for systems making capital improvements.

TABLE IV–26.—SUMMARY OF INITIAL SMALL FILTERED SYSTEM REPORTING REQUIREMENTS

You must report the following items	On the following schedule
Sampling schedule for *E. coli* monitoring	No later than 27 months after promulgation.
Results of *E. coli* analyses (unless State approves a different indicator).	No later than 10 days after the end of the first month following the month in which the sample was collected.
Mean *E. coli* concentration (unless State approves a different indicator).	No later than 45 months after promulgation.
Disinfection profiling component reports	See Table IV–36.
Additional requirements if *E. coli* trigger level is exceeded [1]	
Sampling schedule for *Cryptosporidium* monitoring	No later than 45 months after promulgation.
Results of *Cryptosporidium* analyses	No later than 10 days after the end of the first month following the month in which the sample is collected.
Bin determination	No later than 66 months after promulgation.
Demonstration of compliance with additional treatment requirements.	Beginning 102 months after promulgation [2] (See Table IV–34).

[1] If the *E. coli* annual mean concentration exceeds 10/100 mL for systems using lakes/reservoirs or exceeds 50/100 mL for systems using flowing streams, then systems must conduct *Cryptosporidium* monitoring. States may approve alternative indicator criteria to trigger *Cryptosporidium* monitoring.

[2] States may grant an additional two years for systems making capital improvements.

TABLE IV–27.—SUMMARY OF INITIAL LARGE UNFILTERED SYSTEM REPORTING REQUIREMENTS

You must report the following items	On the following schedule
Cryptosporidium sampling schedule	No later than 3 months after promulgation.
Results of *Cryptosporidium* analyses	No later than 10 days after the end of the first month following the month in which the sample was collected.
Determination of mean *Cryptosporidium* concentration	No later than 36 months after promulgation.
Disinfection profiling component reports	See Table IV–35.
Demonstration of compliance with *Cryptosporidium* inactivation requirements.	Beginning 72 months after promulgation [1] (see Table IV–34).

[1] States may grant an additional two years for systems making capital improvements.

TABLE IV–28.—SUMMARY OF INITIAL SMALL UNFILTERED SYSTEM REPORTING REQUIREMENTS

You must report the following items	On the following schedule
Cryptosporidium sampling schedule	No later than 45 months after promulgation.
Results of *Cryptosporidium* analyses	No later than 10 days after the end of the first month following the month in which the sample was collected.
Determination of mean *Cryptosporidium* concentration	No later than 66 months after promulgation.
Disinfection profiling component reports	See Table IV–35.
Demonstration of compliance with *Cryptosporidium* inactivation requirements.	Beginning 102 months after promulgation [1] (see Table IV–34).

[1] States may grant an additional two years for systems making capital improvements.

2. Reporting Requirements for Source Water Monitoring

a. *Data elements to be reported.* Proposed reporting requirements for LT2ESWTR monitoring stem from proposed analytical method requirements. As stated in sections IV.K and IV.L, systems must have *Cryptosporidium* analyses conducted by EPA-approved laboratories using Methods 1622 or 1623. *E. coli* analyses must be performed by State-approved laboratories using the *E. coli* methods proposed for approval in section IV.K. Systems are required to report the data elements specified in Table IV–29 for each *Cryptosporidium* analysis. To comply with LT2ESWTR requirements, only the sample volume filtered and the number of oocysts counted must be reported for samples in which at least 10 L is filtered and all of the sample volume is analyzed. Additional information is required for samples where the laboratory analyzes less than 10 L or less than the full sample volume collected. Table IV–30 presents the data elements that systems must report for *E. coli* analyses.

As described in the following section, EPA is developing a data system to manage and analyze the microbial monitoring data that will be reported by large systems under the LT2ESWTR. EPA is exploring approaches for application of this data system to support small system data reporting as well. Systems, or laboratories acting as the systems' agents, must keep Method 1622/1623 bench sheets and slide examination report forms until 36 months after an equivalent round of source water monitoring has been completed (*e.g.*, second round of *Cryptosporidium* monitoring).

TABLE IV–29.—PROPOSED *Cryptosporidium* DATA ELEMENTS TO BE REPORTED

Data element	Reason for data element
Identifying information	
• PWSID	Needed to associate plant with public water system.
• Facility ID	Needed to associate sample result with facility.
• Sample collection point	Needed to associate sample result with sampling point.
• Sample collection date	Needed to determine that utilities are collecting samples at the frequency required.
• Sample type (field or matrix spike) [1]	Needed to distinguish field samples from matrix samples for recovery calculations.
Sample results	
• Sample volume filtered (L), to nearest ¼ L [2]	Needed to verify compliance with sample volume requirements.
• Was 100% of filtered volume examined? [3]	Needed to calculate the final concentration of oocysts/L and determine if volume analyzed requirements are met.
• Number of oocysts counted	Needed to calculate the final concentration of oocysts/L.

[1] For matrix spike samples, sample volume spiked and estimated number of oocysts spiked must be reported. These data are not required for field samples.

[2] For samples in which <10 L is filtered or <100% of the sample volume is examined, the number of filters used and the packed pellet volume must also be reported to verify compliance with LT2ESWTR sample volume analysis requirements. These data are not required for most samples.

[3] For samples in which <100% of sample is examined, the volume of resuspended concentrate and volume of this resuspension processed through IMS must be reported to calculate the sample volume examined. These data will not be required for most samples.

TABLE IV–30.—PROPOSED *E. coli* DATA ELEMENTS TO BE REPORTED

Data element	Reason for collecting data element
Identifying Information	
PWS ID	Needed to associate analytical result with public water system.
Facility ID	Needed to associate plant with public water system.
Sample collection point	Needed to associate sample result with sampling point.
Sample collection date	Needed to determine that utilities are collecting samples at the frequency required.
Analytical method number	Needed to associate analytical result with analytical method.
Method Type	Needed to verify that an approved method was used and call up correct web entry form.
Source water type	Needed to assess *Cryptosporidium* indicator relationships.
E. coli/100 mL	Sample result (although not required, the laboratory also will have the option of entering primary measurements for a sample into the LT2ESWTR internet-based database to have the database automatically calculate the sample result).
Turbidity Information	
Turbidity result	Needed to assess *Cryptosporidium* indicator relationships.

b. Data system. Because source water monitoring by large systems (serving at least 10,000 people) will begin 6 months following promulgation of the LT2ESWTR, EPA expects to act as the primacy agency with oversight responsibility for large system sampling, analysis, and data reporting. To facilitate collection and analysis of large system monitoring data, EPA is developing an Internet-based electronic data collection and management system. This approach is similar to that used under the Unregulated Contaminants Monitoring Rule (UCMR) (64 FR 50556, September 17, 1999) (USEPA 1999c).

Analytical results for *Cryptosporidium*, *E. coli*, and turbidity analyses will be reported directly to this database using web forms and software that can be downloaded free of charge.

The data system will perform logic checks on data entered and calculate final results from primary data (where necessary). This is intended to reduce reporting errors and limit the time involved in investigating, checking, and correcting errors at all levels. EPA will make large system monitoring data available to States when States assume primacy for the LT2ESWTR or earlier under State agreements with EPA.

Large systems should instruct their laboratories to electronically enter monitoring results into the EPA data system using web-based manual entry forms or by uploading XML files from laboratory information management systems (LIMS). After data are submitted by a laboratory, systems may review the results on-line. If a system believes that a result was entered into the data system erroneously, the system may notify the laboratory to rectify the entry. In addition, if a system believes that a result is incorrect, the system may submit the result as a contested result and petition EPA or the State to invalidate the sample. If a system contests a sample result, the system must submit a rationale to the primacy agency, including a supporting statement from the laboratory, providing a justification. Systems may arrange with laboratories to review their sample results prior to the results being entered into the EPA data system. Also, if a system determines that its laboratory does not have the capability to report data electronically, the system can submit a request to EPA to use an alternate reporting format.

Regardless of the reporting process used, systems are required to report an analytical monitoring result to the primacy agency no later than 10 days after the end of the first month following the month when the sample was collected. As described in section IV.A.1, if a system is unable to report a valid *Cryptosporidium* analytical result for a scheduled sampling date due to failure to comply with the analytical method requirements (*e.g.*, violation of quality control requirements), the system must collect a replacement sample within 14 days of being notified by the laboratory or the State that a result cannot be reported for that date and must submit an explanation for the replacement sample with the analytical results. A system will not incur a monitoring violation if the State determines that the failure to report a valid analysis result was due to circumstances beyond the control of the system. However, in all cases the system must collect a replacement sample.

The data elements to be collected by the electronic data system will enhance the reliability of the microbial data generated under the LT2ESWTR, while reducing the burden on the analytical laboratories and public water systems. Tables IV–31 and IV–32 summarize the system's data analysis functions for *Cryptosporidium* measurements.

TABLE IV–31.— LT2ESWTR DATA SYSTEM FUNCTIONS FOR *Cryptosporidium* DATA

Value calculated	Formula	Applicability to sample types	
		Field	Matrix spike
Calculation of sample volume analyzed.	(Volume filtered) * (resuspended concentrate volume transferred to IMS/resuspended concentrate volume).	Yes	Yes.
Pellet volume analyzed	(pellet volume)*(resuspended concentrated volume transferred to IMS/resuspended concentrate volume).	Yes	Yes.
Calculation of oocysts/L	(Number of oocysts counted)/(sample volume analyzed)	Yes	Yes.
Calculation of estimated number of oocysts spiked/L.	(Number of oocysts spiked)/(sample volume spiked)	No	Yes.
Calculation of percent recoveries for MS samples.	((Calculated # of oocysts/L for the MS sample)—(Calculated # of oocysts/L in the associated field sample)) / (Estimated number of oocysts spiked/L) * 100%.	No	Yes.

TABLE IV–32.—LT2ESWTR DATA SYSTEM FUNCTIONS FOR *Cryptosporidium* COMPLIANCE CHECKS

LT2 requirements	Description
Sample volume analysis	Specifies that the LT2 requirements for sample volume analyzed were met when: • volume analyzed is > 10 L. • volume analyzed is < 10 L and pellet volume analyzed is at least 2 mL. • volume analyzed < 10 L and pellet volume analyzed < 2 mL and 100% of filtered volume examined= Y and two filters were used. Specifies that the LT2 requirements for sample volume analyzed were not met when: • volume analyzed < 10 L and pellet volume analyzed is < 2 mL and 100% of filtered volume examined= N. • volume analyzed is < 10 L and pellet volume analyzed < 2 mL and only 1 filter used.
Schedule met	Specifies that the predetermined sampling schedule is met when the sample collection data is within ± 2 days of the scheduled date.

c. *Previously collected monitoring data.* Table IV–33 provides a summary of the items that systems must report to EPA for consideration of previously collected (grandfathered) monitoring data under the LT2ESWTR. For each field and matrix spike (MS) sample, systems must report the data elements specified in Table IV–29. In addition, the laboratory that analyzed the samples must submit a letter certifying that all Method 1622 and 1623 quality control requirements (including ongoing precision and recovery (OPR) and method blank (MB) results, holding times, and positive and negative staining controls) were performed at the required frequency and were acceptable. Alternatively, the laboratory may provide for each field, MS, OPR, and MB sample a bench sheet and sample examination report form (Method 1622 and 1623 bench sheets are shown in USEPA 2003h).

Systems must report all routine source water *Cryptosporidium* monitoring results collected during the

period covered by the previously collected data that have been submitted. This applies to all samples that were collected from the sampling location used for monitoring, not spiked, and analyzed using the laboratory's routine process for Method 1622 or 1623 analyses, including analytical technique and QA/QC. Other requirements associated with use of previously collected data are specified in section IV.A.1.d. Where applicable, systems must provide documentation addressing the dates and reason(s) for re-sampling, as well as the use of presedimentation, off-stream storage, or bank filtration during monitoring. Review of the submitted information, along with the results of the quality assurance audits of the laboratory that produced the data, will be used to determine whether the data meet the requirements for grandfathering.

TABLE IV–33.—ITEMS THAT MUST BE REPORTED FOR CONSIDERATION OF GRANDFATHERED MONITORING DATA

The following items must be reported [1]	On the following schedule [1]
Data elements listed in Table IV–29 for each field and MS sample	No later than 2 months after promulgation if the system does not intend to conduct new monitoring under the LT2ESWTR.
Letter from laboratory certifying that method-specified QC was performed at required frequency and was acceptable. OR Method 1622/1623 bench sheet and sample examination report form for each field, MS, OPR, and method blank sample. Letter from system certifying (1) that all source water data collected during the time period covered by the previously collected data have been submitted and (2) that the data represent the plant's current source water. Where applicable, documentation addressing the dates and reason(s) for re-sampling, as well as the use of presedimentation, off-stream storage, or bank filtration during monitoring.	OR No later than 8 months after promulgation if the system intends to conduct new monitoring under the LT2ESWTR.

[1] See section IV.A.1. for details.

3. Compliance With Additional Treatment Requirements

Under the proposed LT2ESWTR, systems may choose from a ''toolbox'' of management and treatment options to meet their additional *Cryptosporidium* treatment requirements. In order to receive credit for toolbox components, systems must initially demonstrate that they comply with any required design and implementation criteria, including performance validation testing. Additionally, systems must provide monthly verification of compliance with any required operational criteria, as shown through ongoing monitoring. Required design, implementation, operational, and monitoring criteria for toolbox components are described in section IV.C. Proposed reporting requirements associated with these criteria are shown in Table IV–34 for both large and small systems.

TABLE IV–34.—TOOLBOX REPORTING REQUIREMENTS

Toolbox option (potential *Cryptosporidium* reduction log credit)	You must submit the following items	On the following schedule [1] (systems serving ≥10,000 people)	On the following schedule [1] (systems serving < 10,000 people)
Watershed Control Program (WCP) (0.5 log)	Notify State of intention to develop WCP	No later than 48 months after promulgation	No later than 78 months after promulgation.
	Submit initial WCP plan to State	No later than 60 months after promulgation	No later than 90 months after promulgation.
	Annual program status report and State-approved watershed survey report.	By a date determined by the State, every 12 months, beginning 84 months after promulgation	By a date determined by the State, every 12 months, beginning 114 months after promulgation.
	Request for re-approval and report on the previous approval period.	No later than 6 months prior to the end of the current approval period or by a date previously determined by the State	No later than 6 months prior to the end of the current approval period or by a date previously determined by the State.
Pre-sedimentation (0.5 log) (new basins)	Monthly verification of: Continuous basin operation Treatment of 100% of the flow Continuous addition of a coagulant At least 0.5 log removal of influent turbidity based on the monthly mean of daily turbidity readings for 11 of the 12 previous months	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning 72 months after promulgation	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning 102 months after promulgation.
Two-Stage Lime Softening (0.5 log)	Monthly verification of: Continuous operation of a second clarification step between the primary clarifier and filter Presence of coagulant (may be lime) in first and second stage clarifiers Both clarifiers treat 100% of the plant flow	No later than 72 months after promulgation	No later than 102 months after promulgation.

TABLE IV–34.—TOOLBOX REPORTING REQUIREMENTS—Continued

Toolbox option (potential *Cryptosporidium* reduction log credit)	You must submit the following items	On the following schedule [1] (systems serving ≥10,000 people)	On the following schedule [1] (systems serving < 10,000 people)
Bank filtration (0.5 or 1.0 log) (new)	Initial demonstration of: Unconsolidated, predominantly sandy aquifer Setback distance of at least 25 ft. (0.5 log) or 50 ft. (1.0 log) If monthly average of daily max turbidity is greater than 1 NTU then system must report result and submit an assessment of the cause	Initial demonstration no later than 72 months after promulgation Report within 30 days following the month in which the monitoring was conducted, beginning 72 months after promulgation	Initial demonstration no later than 102 months after promulgation. Report within 30 days following the month in which the monitoring was conducted, beginning 102 months after promulgation.
Combined filter performance (0.5 log)	Monthly verification of: Combined filter effluent (CFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of the 4 hour CFE measurements taken each month	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on 72 months after promulgation	Monthly reporting: within 10 days following the month in which the monitoring was conducted, beginning on 102 months after promulgation.
Membranes (MF, UF, NF, RO) (2.5 log or greater based on verification/integrity testing)	Initial demonstration of: Removal efficiency through challenge studies Methods of challenge studies meet rule criteria Integrity test results and baseline	No later than 72 months after promulgation	No later than 102 months after promulgation.
	Monthly report summarizing: All direct integrity test results above the control limit and the corrective action that was taken All indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken	Within 10 days following the month in which monitoring was conducted, beginning 72 months after promulgation	Within 10 days following the month in which monitoring was conducted, beginning 102 months after promulgation.
Bag filters (1.0 log) and Cartridge filters (2.0 log)	Initial demonstration that the following criteria are met: Process meets the basic definition of bag or cartridge filtration; Removal efficiency established through challenge testing that meets rule criteria Challenge test shows at least 2 and 3 log removal for bag and cartridge filters, respectively	No later than 72 months after promulgation	No later than 102 months after promulgation.
Chlorine dioxide (log credit based on CT)	Summary of CT values for each day and log inactivation based on tables in section IV.C.14	Within 10 days following the month in which monitoring was conducted, beginning 72 months after promulgation	Within 10 days following the month in which monitoring was conducted, beginning 102 months after promulgation.
Ozone (log credit based on CT)	Summary of CT values for each day and log inactivation based on tables in section IV.C.14	Within 10 days following the month in which monitoring was conducted, beginning 72 months after promulgation	Within 10 days following the month in which monitoring was conducted, beginning 102 months after promulgation.
UV (log credit based UV dose and operating within validated conditions)	Results from reactor validation testing demonstrating operating conditions that achieve required UV dose	No later than 72 months after promulgation	No later than 102 months after promulgation.
	Monthly report summarizing the percentage of water entering the distribution system that was not treated by UV reactors operating within validated conditions for the required UV dose in section IV.C.15	Within 10 days following the month in which monitoring was conducted, beginning 72 months after promulgation	Within 10 days following the month in which monitoring was conducted, beginning 102 months after promulgation.
Individual filter performance (1.0 log)	Monthly verification of the following, based on continuous monitoring of turbidity for each individual filter: Filtered water turbidity less than 0.1 NTU in at least 95 percent of the daily maximum values from individual filters (excluding 15 minute period following start up after backwashes) No individual filter with a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on 72 months after promulgation	Monthly reporting: within 10 days following the month in which the monitoring was conducted, beginning 102 months after promulgation.
Demonstration of Performance	Results from testing following State approved protocol	No later than 72 months after promulgation	No later than 102 months after promulgation.

TABLE IV–34.—TOOLBOX REPORTING REQUIREMENTS—Continued

Toolbox option (potential *Cryptosporidium* reduction log credit)	You must submit the following items	On the following schedule [1] (systems serving ≥10,000 people)	On the following schedule [1] (systems serving < 10,000 people)
	Monthly verification of operation within State-approved conditions for demonstration of performance credit	Within 10 days following the month in which monitoring was conducted, beginning 72 months after promulgation	Within 10 days following the month in which monitoring was conducted, beginning 102 months after promulgation.

[1] States may allow an additional two years for systems making capital improvements.

Reporting requirements associated with disinfection profiling and benchmarking are summarized in Table IV–35 for large systems and in Table IV–36 for small systems.

TABLE IV–35.—DISINFECTION BENCHMARKING REPORTING REQUIREMENTS FOR LARGE SYSTEMS

System type	Benchmark component	Submit the following items	On the following schedule
Systems required to conduct *Cryptosporidium* monitoring.	Characterization of Disinfection Practices	*Giardia lamblia* and virus inactivation profiles must be on file for State review during sanitary survey.	No later than 36 months after promulgation.
	State Review of Proposed Changes to Disinfection Practices.	Inactivation profiles and benchmark determinations.	Prior to significant modification of disinfection practice.
Systems not required to conduct *Cryptosporidium* monitoring[1].	Applicability	None	None.
	Characterization of Disinfection Practices	None	None.
	State Review of Proposed Changes to Disinfection Practices.	None	None.

[1]Systems that provide at least 5.5 log of *Cryptosporidium* treatment consistent with a Bin 4 treatment implication are not required to conduct *Cryptosporidium* monitoring.

TABLE IV–36.—DISINFECTION BENCHMARKING REPORTING REQUIREMENTS FOR SMALL SYSTEMS

System type	Benchmark component	Submit the following items	On the following schedule
Systems required to conduct *Cryptosporidium* monitoring.	Characterization of Disinfection Practices	*Giardia lamblia* and virus inactivation profiles must be on file for State review during sanitary survey.	No later than 66 months after promulgation.
	State Review of Proposed Changes to Disinfection Practices.	Inactivation profiles and benchmark determinations.	Prior to significant modification of disinfection practice.
Systems not required to conduct *Cryptosporidium* monitoring and that exceed DBP triggers[1,2,3].	Applicability Period	Notify State that profiling is required based on DBP levels.	No later than 42 months after promulgation.
	Characterization of Disinfection Practices	*Giardia lamblia* and virus inactivation profiles must be on file for State review during sanitary survey.	No later than 54 months after promulgation.
	State Review of Proposed Changes to Disinfection Practices.	Inactivation profiles and benchmark determinations.	Prior to significant modification of disinfection practice.
Systems not required to conduct *Cryptosporidium* monitoring and that do not exceed DBP triggers[2,3].	Applicability Period	Notify State that profiling is not required based on DBP levels.	No later than 42 months after promulgation.
	Characterization of Disinfection Practices	None	None.
	State Review of Proposed Changes to Disinfection Practices.	None	None.

[1] Systems that provide at least 5.5 log of *Cryptosporidium* treatment consistent with a Bin 4 treatment implication are not required to conduct *Cryptosporidium* monitoring.

[2] If the *E. coli* annual mean concentration is ≤ 10/100 mL for systems using lakes/reservoir sources or ≤ 50/100 mL for systems using flowing stream sources, the system is not required to conduct *Cryptosporidium* monitoring and will only be required to characterize disinfection practices if DBP triggers are exceeded.

[3] If the system is a CWS or NTNCWSs and TTHM or HAA5 levels in the distribution system are at least 0.064 mg/L or 0.048 mg/L, respectively, calculated as an LRAA at any Stage 1 DBPR sampling site, then the system is triggered into disinfection profiling.

4. Request for Comment

EPA requests comment on the reporting and recordkeeping requirements proposed for the LT2ESWTR.

Specifically, the Agency requests comment on the proposed requirement that systems report monthly on the use of microbial toolbox components to demonstrate compliance with their *Cryptosporidium* treatment requirements. An alternative may be for systems to keep records on site for State review instead of reporting the data.

K. Analytical Methods

EPA is proposing to require public water systems to conduct LT2ESWTR monitoring using approved methods for *Cryptosporidium*, *E. coli*, and turbidity analyses. This includes meeting quality control criteria stipulated by the approved methods and additional method-specific requirements, as stated later in this section. Related requirements on the use of approved laboratories are discussed in section IV.L, and proposed requirements for reporting of data were stated previously in section IV.J. EPA has developed draft guidance for sampling and analyses under the LT2ESWTR (see USEPA 2003g and 2003h). This guidance is available in draft form in the docket for today's proposal (*http://www.epa.gov/edocket/*).

1. *Cryptosporidium*

a. *What is EPA proposing today?* Method 1622: ''*Cryptosporidium* in Water by Filtration/IMS/FA'' (EPA–821-R–01–026, April 2001) (USEPA 2001e) and Method 1623: ''*Cryptosporidium* and Giardia in Water by Filtration/IMS/FA'' (EPA 821–R–01–025, April 2001) (USEPA 2001f) are proposed for *Cryptosporidium* analysis under this rule. Methods 1622 and 1623 require filtration, immunomagnetic separation (IMS) of the oocysts from the captured material, and examination based on IFA, DAPI staining results, and differential interference contrast (DIC) microscopy for determination of oocyst concentrations.

Method Requirements

For each *Cryptosporidium* sample under this proposal, all systems must analyze at least a 10–L sample volume. Systems may collect and analyze greater than a 10–L sample volume. If a sample is very turbid, it may generate a large packed pellet volume upon centrifugation (a packed pellet refers to the concentrated sample after centrifugation has been performed in EPA Methods 1622 and 1623). Based on IMS purification limitations, samples resulting in large packed pellets will require that the sample concentrate be aliquoted into multiple ''subsamples'' for independent processing through IMS, staining, and examination. Because of the expense of the IMS reagents and analyst time to examine multiple slides per sample, systems are not required to analyze more than 2 mL of packed pellet volume per sample.

In cases where it is not feasible for a system to process a 10–L sample for *Cryptosporidium* analysis (*e.g.*, filter clogs prior to filtration of 10 L) the system must analyze as much sample volume as can be filtered by 2 filters, up to a packed pellet volume of 2 mL. This condition applies only to filters that have been approved by EPA for nationwide use with Methods 1622 and 1623—the Pall Gelman Envirochek™ and Envirochek™ HV filters, the IDEXX Filta-Max™ foam filter, and the Whatman CrypTest™ cartridge filter.

Methods 1622 and 1623 include fluorescein isothiocyanate (FITC) as the primary antibody stain for *Cryptosporidium* detection, DAPI staining to detect nuclei, and DIC to detect internal structures. For purposes of the LT2ESWTR, systems must report total *Cryptosporidium* oocysts as detected by FITC as determined by the color (apple green or alternative stain color approved for the laboratory under the Lab QA Program described in section VI.L), size (4–6 μm) and shape (round to oval). This total includes all of the oocysts identified as described here, less atypical organisms identified by FITC, DIC, or DAPI (*e.g.*, possessing spikes, stalks, appendages, pores, one or two large nuclei filling the cell, red fluorescing chloroplasts, crystals, spores, etc.).

Matrix Spike Samples

As required by Method 1622 and 1623, systems must have 1 matrix spike (MS) sample analyzed for each 20 source water samples. The volume of the MS sample must be within ten percent of the volume of the unspiked sample that is collected at the same time, and the samples must be collected by splitting the sample stream or collecting the samples sequentially. The MS sample and the associated unspiked sample must be analyzed by the same procedure. MS samples must be spiked and filtered in the laboratory. However, if the volume of the MS sample is greater than 10 L, the system is permitted to filter all but 10 L of the MS sample in the field, and ship the filtered sample and the remaining 10 L of source water to the laboratory. In this case, the laboratory must spike the remaining 10 L of water and filter it through the filter used to collect the balance of the sample in the field.

EPA is proposing to require the use of flow cytometer-counted spiking suspensions for spiked QC samples during the LT2ESWTR. This provision is based on the improved precision expected for spiking suspensions counted with a flow cytometer, as compared to those counted using well slides or hemacytometers. During the Information Collection Rule Supplemental Surveys, the mean relative standard deviation (RSD) across 25 batches of flow cytometer-sorted *Cryptosporidium* spiking suspensions was 1.8%, with a median of 1.7% (Connell *et al.* 2000). In EPA Performance Evaluation (PE) studies, the mean RSD for flow cytometer sorted *Cryptosporidium* spiking suspensions was 3.4%. In comparison, the mean RSD for *Cryptosporidium* spiking suspensions enumerated manually by 20 laboratories using well slides or hemacytometers was 17% across 108 rounds of 10-replicate counts.

QC requirements in Methods 1622 and 1623 must be met by laboratories analyzing *Cryptosporidium* samples under the LT2ESWTR. The QC acceptance criteria are the same as stipulated in the method. For the initial precision and recovery (IPR) test, the mean *Cryptosporidium* recovery must be 24% to 100% with maximum relative standard deviation (*i.e.*, precision) of 55%. For each ongoing precision and recovery (OPR) sample, recovery must be in the range of 11% to 100%. For each method blank, oocysts must be undetected.

Methods 1622 and 1623 are performance-based methods and, therefore, allow multiple options to perform the sample processing steps in the methods if a laboratory can meet applicable QC criteria and uses the same determinative technique. If a laboratory uses the same procedures for all samples, then all field samples and QC samples must be analyzed in that same manner. However, if a laboratory uses more than one set of procedures for *Cryptosporidium* analyses under LT2ESWTR then the laboratory must analyze separate QC samples for each

option to verify compliance with the QC criteria. For example, if the laboratory analyzes samples using both the Envirochek™ and Filta-Max™ filters, a separate set of IPR, OPR, method blank, and MS samples must be analyzed for each filtration option.

b. *How was this proposal developed?* EPA is proposing EPA Methods 1622 and 1623 for *Cryptosporidium* analyses under the LT2ESWTR because these are the best available methods that have undergone full validation testing. In addition, these methods have been used successfully in a national source water monitoring program as part of the Information Collection Rule Supplemental Surveys (ICRSS). The minimum sample volume and other quality control requirements are intended to ensure that data are of sufficient quality to assign systems to LT2ESWTR risk bins. Further, the proposed method requirements for analysis of *Cryptosporidium* are consistent with recommendations by the Stage 2 M-DBP Advisory Committee. In the Agreement in Principle, the Committee recommended that source water *Cryptosporidium* monitoring under the LT2ESWTR be conducted using EPA Methods 1622 and 1623 with no less than 10 L samples. EPA also has proposed these methods for approval for ambient water monitoring under Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Ambient Water (66 FR 45811, August 30, 2001) (USEPA 2001i).

When considering the method performance that could be achieved for analysis of *Cryptosporidium* under the LT2ESWTR, EPA and the Advisory Committee evaluated the *Cryptosporidium* recoveries reported for Methods 1622 and 1623 in the ICRSS. As described in section III.C, the ICRSS was a national monitoring program that involved 87 utilities sampling twice per month over 1 year for *Cryptosporidium* and other microorganisms and water quality parameters. During the ICRSS, the mean recovery and relative standard deviation associated with enumeration of MS samples for total oocysts by Methods 1622 and 1623 were 43% and 47%, respectively (Connell *et al.* 2000).

EPA believes that with provisions like the Laboratory QA Program for *Cryptosporidium* laboratories (see section IV.L), comparable performance to that observed in the ICRSS can be achieved in LT2ESWTR monitoring with the use of Methods 1622 and 1623, and that this level of performance will be sufficient to realize the public health goals intended by EPA and the Advisory Committee for the LT2ESWTR. Other methods would need to achieve comparable performance to be considered for use under the LT2ESWTR. For example, EPA does not expect the Information Collection Rule Method, which resulted in 12% mean recovery for MS samples during the Information Collection Rule Laboratory Spiking Program (Scheller, 2002), to meet LT2ESWTR data quality objectives.

For systems collecting samples larger than 10 L, EPA is proposing the approach of allowing systems to filter all but 10 L of the corresponding MS sample in the field, and ship the filtered sample and the remaining 10 L of source water to the laboratory for spiking and analysis. The Agency has determined that the added costs associated with shipping entire high-volume (*e.g.* 50–L) samples to a laboratory for spiking and analysis are not merited by improved data quality relative to the use of *Cryptosporidium* MS data under the LT2ESWTR. EPA estimates that the average cost for shipping a 50–L bulk water sample is $350 more than the cost of shipping a 10–L sample and a filter. A study comparing these two approaches (*i.e.*, spiking and filtering 50 L vs. field filtering 40 L and spiking 10 L) indicated that spiking the 10–L sample produced somewhat higher recoveries (USEPA 2003i). However, the differences were not significant enough to offset the greatly increased shipping costs, given the limited use of MS data in LT2ESWTR monitoring.

c. *Request for comment.* EPA requests comment on the proposed method requirements for *Cryptosporidium* analysis, including the following specific issues:

Minimum Sample Volume

It is the intent of EPA that LT2ESWTR sampling provide representative annual mean source water concentrations. If systems were unable to analyze an entire sample volume during certain periods of the year due to elevated turbidity or other water quality factors, this could result in systems analyzing different volumes in different samples. Today's proposal requires systems to analyze at least 10 L of sample or the maximum amount of sample that can be filtered through two filters, up to a packed pellet volume of 2 mL. EPA requests comment on whether these requirements are appropriate for systems with source waters that are difficult to filter or that generate a large packed pellet volume. Alternatively, systems could be required to filter and analyze at least 10 L of sample with no exceptions.

Approval of Updated Versions of EPA Methods 1622 and 1623

EPA has developed draft revised versions of EPA Methods 1622 and 1623 in order to consolidate several method-related changes EPA believes may be necessary to address LT2ESWTR monitoring requirements (see USEPA 2003j and USEPA 2003k). EPA is requesting comment on whether these revised versions should be approved for monitoring under the LT2ESWTR, rather than the April 2001 versions proposed in today's rule. If the revised versions were approved, previously collected data generated using the earlier versions of the methods would still be acceptable for grandfathering, provided the other criteria described in section IV.A.1.d were met. Drafts of the updated methods are provided in the docket for today's rule, and differences between these versions and the April 2001 versions of the methods are clearly indicated for evaluation and comment. Changes to the methods include the following:

(1) Increased flexibility in matrix spike (MS) and initial precision and recovery (IPR) requirements—the requirement that the laboratory must analyze an MS sample on the first sampling event for a new PWS would be changed to a recommendation; the revised method would allow the IPR test to be performed across four different days, rather than restrict analyses to 1 day;

(2) Clarification of some method procedures, including the spiking suspension vortexing procedure and the buffer volumes used during immunomagnetic separation (IMS); requiring (rather than recommending) that laboratories purchase HCl and NaOH standards at the normality specified in the method; and clarification that the use of methanol during slide staining in section 14.2 of the method is as per manufacturer's instructions;

(3) Additional recommendations for minimizing carry-over of debris onto microscope slides after IMS and information on microscope cleaning;

(4) Clarification in the method of the actions to take in the event of QC failures, such as that any positive sample in a batch associated with an unacceptable method blank is unacceptable and that any sample in a batch associated with an unacceptable ongoing precision and recovery (OPR) sample is unacceptable;

(5) Changes to the sample storage and shipping temperature to ''less than 10°C and not frozen'', and additional guidance on sample storage and shipping procedures that addresses time of collection, and includes suggestions for monitoring sample temperature during shipment and upon receipt at the laboratory.

(6) Additional analyst verification procedures—adding examination using differential interference contrast (DIC) microscopy to the analyst verification requirements.

(7) Addition of an approved method modification using the Pall Gelman Envirochek HV filter. This approval was based on an interlaboratory validation study demonstrating that three laboratories, each analyzing reagent water and a different source water, met all method acceptance criteria for *Cryptosporidium*. EPA issued a letter (dated March 21, 2002) under the Alternative Test Procedures program approving the procedure as an acceptable version of Method 1623 for *Cryptosporidium* (but not for Giardia). EPA also noted in the letter that the procedure was considered to be an acceptable modification of EPA Method 1622.

(8) Incorporation of detailed procedures for concentrating samples using an IDEXX Filta-Max™ foam filter. A method modification using this filter already is approved by EPA in the April 2001 versions of the methods.

(9) Addition of BTF EasySeed™ irradiated oocysts and cysts as acceptable materials for spiking routine QC samples. EPA approved the use of EasySeed™ based on side-by-side comparison tests of method recoveries using EasySeed™ and live, untreated organisms. EPA issued a letter (dated August 1, 2002) approving EasySeed™ for use in routine QC samples for EPA Methods 1622 and 1623 and for demonstrating comparability of method modifications in a single laboratory.

(10) Removal of the Whatman Nuclepore CrypTest™ cartridge filter. Although a method modification using this filter was approved by EPA in the April 2001 versions of the methods, the filter is no longer available from the manufacturer, and so is no longer an option for sample filtration.

The changes in the June 2003 draft revisions of EPA Methods 1622 and 1623 reflect method-related clarifications, modifications, and additions that EPA believes should be addressed for LT2ESWTR *Cryptosporidium* monitoring. Alternatively, these issues could be addressed through regulatory requirements in the final LT2ESWTR (for required changes and additions) and through guidance (for recommended changes and clarifications). However, EPA believes that addressing these issues through a single source in updated versions of EPA Methods 1622 and 1623 (which could be approved in the final LT2ESWTR) may be more straightforward and easier for systems and laboratories to follow than addressing them in multiple sources (*i.e.*, existing methods, the final rule, and laboratory guidance).

2. *E. coli*

a. *What is EPA proposing today?* For enumerating source water *E. coli* density under the LT2ESWTR, EPA is proposing to approve the same methods that were proposed by EPA under Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Ambient Water (66 FR 45811, August 30, 2001) (USEPA 2001i). These methods are summarized in Table IV–37. Methods are listed within the general categories of most probable number tests and membrane filtration tests. Method identification numbers are provided for applicable standards published by EPA and voluntary consensus standards bodies (VCSB) including Standard Methods, American Society of Testing Materials (ASTM), and the Association of Analytical Chemists (AOAC).

TABLE IV–37.— PROPOSED METHODS FOR E. COLI ENUMERATION [1]

Technique	Method[1]	EPA	VCSB methods			Commercial example
			Standard methods[2]	ASTM[3]	AOAC[4]	
Most Probable Number (MPN).	LTB, EC-MUG		9221B.1/ 9221F			
	ONPG-MUG		9223B		991.15	Colilert®[5].
	ONPG-MUG		9223B			Colilert-18®[5 7].
Membrane Filter (MF)	mFC→NA–MUG		9222D/ 9222G			
	mENDO or LES-ENDO→NA–MUG.		9222B/ 9222G			
	mTEC agar	1103.1	9213D	D5392–93		
	Modified mTEC agar	1603				
	MI medium	1604				
	m-ColiBlue24 broth					m-ColiBlue24[6].

[1] Tests must be conducted in a format that provides organism enumeration.
[2] Standard Methods for the Examination of Water and Wastewater. American Public Health Association. 20th, 19th, and 18th Editions. Amer. Publ. Hlth. Assoc., Washington, DC.
[3] Annual Book of ASTM Standards—Water and Environmental Technology. Section 11.02. ASTM. 100 Barr Harbor Drive, West Conshohocken, PA 19428.
[4] Official Methods of Analysis of AOAC International, 16th Edition, Volume I, Chapter 17. AOAC International. 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877–2417.
[5] Manufactured by IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092.
[6] Manufactured by Hach Company, 100 Dayton Ave., Ames, IA 50010.
[7] Acceptable version of method approved as a drinking water alternative test procedure.

EPA is proposing to allow a holding time of 24 hours for *E. coli* samples. The holding time refers to the time between sample collection and initiation of analysis. Currently, 40 CFR 141.74(a) limits the holding time for source water coliform samples to 8 hours and requires that samples be kept below 10°C during transit. EPA believes that new studies, described later in this section, demonstrate that *E. coli* analysis results for samples held for 24 hours will be comparable to samples held for 8 hours, provided the samples are held below 10°C and are not allowed to freeze. This proposed increase in holding time is significant for the LT2ESWTR because typically it is not feasible for systems to meet an 8-hour holding time when samples cannot be analyzed on-site. Many small systems that will conduct *E. coli* monitoring under the LT2ESWTR lack a certified on-site laboratory for *E. coli* analyses and will be required to ship samples to a certified laboratory. EPA believes that it is feasible for these systems to comply with a 24 hour holding time for *E. coli* samples through using overnight delivery services.

b. *How was this proposal developed?* As noted, EPA recently proposed methods for ambient water *E. coli* analysis under Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for

Biological Pollutants in Ambient Water (66 FR 45811, August 30, 2001) (USEPA 2001i). These proposed methods were selected based on data generated by EPA laboratories, submissions to the alternate test procedures (ATP) program and voluntary consensus standards bodies, published peer reviewed journal articles, and publicly available study reports.

The source water analysis for *E. coli* that will be conducted under the LT2ESWTR is similar to the type of ambient water analyses for which these methods were previously proposed (66 FR 45811, August 30, 2001) (USEPA 2001i). EPA continues to support the findings of this earlier proposal and believes that these methods have the necessary sensitivity and specificity to meet the data quality objectives of the LT2ESWTR.

New Information on *E. coli* Sample Holding Time

It is generally not feasible for systems that must ship *E. coli* samples to an off-site laboratory to comply with an 8-hour holding time requirement. During the ICRSS, 100% of the systems that shipped samples off-site for *E. coli* analysis exceeded the 8 hour holding time; 12% of these samples had holding times in excess of 30 hours. Most large systems that will be required to monitor for *E. coli* under the LT2ESWTR could conduct these analyses on-site, but many small systems will need to ship samples off-site to a certified contract laboratory.

EPA participated in three phases of studies to assess the effect of increased sample holding time on *E. coli* analysis results. These are summarized as follows, and are described in detail in Pope *et al.* (2003).

- Phase 1–EPA, the Wisconsin State Laboratory of Hygiene (WSLH), and DynCorp conducted a study to evaluate *E. coli* sample concentrations from four sites at 8, 24, 30, and 48 hours after sample collection for samples stored at 4°C, 10°C, 20°C, and 35°C. Temperature was varied to assess the effect of different shipping conditions. Samples were analyzed in triplicate by membrane filtration (mFC followed by transfer to NA–MUG) and Colilert (Quanti-Tray 2000) (Pope *et al.* 2003).
- Phase 2–EPA conducted a study to evaluate *E. coli* sample concentrations from seven sites at 8, 24, 30, and 48 hours after sample collection for samples stored in coolers containing wet ice or Utek ice packs (to assess real-world storage conditions). Samples were analyzed in triplicate by membrane filtration (mFC followed by transfer to NA–MUG) and Colilert (Quanti-Tray 2000) (Pope *et al.* 2003).
- Phase 3–EPA, through cooperation with AWWA, obtained *E. coli* holding time data from ten drinking water utilities that evaluated samples from 12 source waters. Each utility used an *E. coli* method of its choice (Colilert, mTEC, mEndo to NA–MUG, or mFC to NA–MUG). Samples were stored in coolers with wet ice, Utek ice packs, or Blue ice (Pope *et al.* 2003).

Phase 1 results indicated that *E. coli* concentrations were not significantly different after 24 hours at most sites when samples were stored at lower temperatures. Results from Phase 2, which evaluated actual sample storage practices, verified the Phase 1 observations at most sites. Similar results were observed during Phase 3, which evaluated a wider variety of surface waters from different regions throughout the U.S. During Phase 3, *E. coli* concentrations were not significantly different after 24 hours at most sites when samples were maintained below 10°C and did not freeze during storage. At longer holding times (*e.g.*, 48 hours), larger differences were observed.

Based on these studies, EPA has concluded that *E. coli* samples can be held for up to 24 hours prior to analysis without compromising the data quality objectives of LT2ESWTR *E. coli* monitoring. Further, EPA believes that it is feasible for systems that must ship *E. coli* samples to an off-site laboratory for analysis to meet a 24 hour holding time. EPA is developing guidance for systems on packing and shipping *E. coli* samples so that samples are maintained below 10°C and not allowed to freeze (USEPA 2003g). This guidance is available in draft in the docket for today's proposal (*http://www.epa.gov/edocket/*).

c. *Request for comment.* EPA requests comment on whether the *E. coli* methods proposed for approval under the LT2ESWTR are appropriate, and whether there are additional methods not proposed that should be considered. Comments concerning method approval should be accompanied by supporting data where possible.

EPA also requests comment on the proposal to extend the holding time for *E. coli* source water sample analyses to 24 hours, including any data or other information that would support, modify, or repudiate such an extension. Should EPA limit the extended holding time to only those *E. coli* analytical methods that were evaluated in the holding time studies noted in this section? The results in Pope *et al.* (2003) indicate that most *E. coli* samples analyzed using ONPG-MUG (see methods in Table IV–37) incurred no significant degradation after a 30 to 48 hour holding time. As a result, should EPA increase the source water *E. coli* holding time to 30 or 48 hours for samples evaluated by ONPG-MUG, and retain a 24-hour holding time for samples analyzed by other methods? EPA also requests comment on the cost and availability of overnight delivery services for *E. coli* samples, especially in rural areas.

3. Turbidity

a. *What is EPA proposing today?* For turbidity analyses that will be conducted under the LT2ESWTR, EPA is proposing to require systems to use the analytical methods that have been previously approved by EPA for analysis of turbidity in drinking water, as listed in 40 CFR Part 141.74. These are Method 2130B as published in Standard Methods for the Examination of Water and Wastewater (APHA 1992), EPA Method 180.1 (USEPA 1993), and Great Lakes Instruments Method 2 (Great Lakes Instruments, 1992), and Hach FilterTrak Method 10133.

EPA method 180.1 and Standard Method 2130B are both nephelometric methods and are based upon a comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension. Great Lakes Instruments Method 2 is a modulated four beam infrared method using a ratiometric algorithm to calculate the turbidity value from the four readings that are produced. Hach Filter Trak (Method 10133) is a laser-based nephelometric method used to determine the turbidity of finished drinking waters.

Turbidimeters

Systems are required to use turbidimeters described in EPA-approved methods for measuring turbidity. For regulatory reporting purposes, either an on-line or a bench top turbidimeter can be used. If a system chooses to use on-line units for monitoring, the system must validate the continuous measurements for accuracy on a regular basis using a protocol approved by the State.

b. *How was this proposal developed?* EPA believes the currently approved methods for analysis of turbidity in drinking water are appropriate for turbidity analyses that will be conducted under the LT2ESWTR.

c. *Request for comment.* EPA requests comment on whether the turbidity methods proposed today for the LT2ESWTR should be approved, and whether there are additional methods not proposed that should be approved.

L. Laboratory Approval

Given the potentially significant implications in terms of both cost and public health protection of microbial monitoring under the LT2ESWTR, laboratory analyses for *Cryptosporidium*, *E. coli*, and turbidity must be accurate and reliable within the limits of approved methods. Therefore, EPA proposes to require public water systems to use laboratories that have been approved to conduct analyses for these parameters by EPA or the State. The following criteria are proposed for laboratory approval under the LT2ESWTR:

- For *Cryptosporidium* analyses under the LT2ESWTR, EPA proposes to approve laboratories that have passed a quality assurance evaluation under EPA's Laboratory Quality Assurance Evaluation Program (Lab QA Program) for Analysis of *Cryptosporidium* in Water (described in 67 FR 9731, March 4, 2002) (USEPA 2002c). If States adopt an equivalent approval process under State laboratory certification programs, then systems can use laboratories approved by the State.
- For *E. coli* analyses, EPA proposes to approve laboratories that have been certified by EPA, the National Environmental Laboratory Accreditation Conference, or the State for total coliform or fecal coliform analysis in source water under 40 CFR 141.74. The laboratory must use the same analytical technique for *E. coli* that the laboratory uses for total coliform or fecal coliform analysis under 40 CFR 141.74.
- Turbidity analyses must be conducted by a person approved by the State for analysis of turbidity in drinking water under 40 CFR 141.74.

These criteria are further described in the following paragraphs.

1. *Cryptosporidium* Laboratory Approval

Because States do not currently approve laboratories for *Cryptosporidium* analyses and LT2ESWTR monitoring will begin 6 months after rule promulgation, EPA will initially assume responsibility for *Cryptosporidium* laboratory approval. EPA expects, however, that States will include *Cryptosporidium* analysis in their State laboratory certification programs in the future. EPA has established the Lab QA Program for *Cryptosporidium* analysis to identify laboratories that can meet LT2ESWTR data quality objectives. This is a voluntary program open to laboratories involved in analyzing *Cryptosporidium* in water. Under this program, EPA assesses the ability of laboratories to reliably measure *Cryptosporidium* occurrence with EPA Methods 1622 and 1623, using both performance testing samples and an on-site evaluation.

EPA initiated the Lab QA Program for *Cryptosporidium* analysis prior to promulgation of the LT2ESWTR to ensure that adequate sample analysis capacity will be available at qualified laboratories to support the required monitoring. The Agency is monitoring sample analysis capacity at approved laboratories through the Lab QA Program, and does not plan to implement LT2ESWTR monitoring until the Agency determines that there is adequate laboratory capacity. In addition, utilities that choose to conduct *Cryptosporidium* monitoring prior to LT2ESWTR promulgation with the intent of grandfathering the data may elect to use laboratories that have passed the EPA quality assurance evaluation.

Laboratories seeking to participate in the EPA Lab QA Program for *Cryptosporidium* analysis must submit an interest application to EPA, successfully analyze a set of initial performance testing samples, and undergo an on-site evaluation. The on-site evaluation includes two separate but concurrent assessments: (1) Assessment of the laboratory's sample processing and analysis procedures, including microscopic examination, and (2) evaluation of the laboratory's personnel qualifications, quality assurance/quality control program, equipment, and recordkeeping procedures.

Laboratories that pass the quality assurance evaluation will be eligible for approval for *Cryptosporidium* analysis under the LT2ESWTR. The Lab QA Program is described in detail in a **Federal Register** Notice (67 FR 9731, March 4, 2002) (USEPA 2002c) and additional information can be found online at: *www.epa.gov/safewater/lt2/cla_int.html.*

Laboratories in the Lab QA Program will receive a set of three ongoing proficiency testing (OPT) samples approximately every four months. EPA will evaluate the precision and recovery data for OPT samples to determine if the laboratory continues to meet the performance criteria of the Laboratory QA Program.

2. *E. coli* Laboratory Approval

Pubic water systems are required to have samples analyzed for *E. coli* by laboratories certified under the State drinking water certification program to perform total coliform and fecal coliform analyses under 40 CFR 141.74. EPA is proposing that the general analytical techniques the laboratory is certified to use under the drinking water certification program (*e.g.*, membrane filtration, multiple-well, multiple-tube) will be the methods the laboratory can use to conduct *E. coli* source water analyses under the LT2ESWTR.

3. Turbidity Analyst Approval

Measurements of turbidity must be conducted by a party approved by the State. This is consistent with current requirements for turbidity measurements in drinking water (40 CFR 141.74).

4. Request for Comment

EPA requests comment on the laboratory approval requirements proposed today, including the following specific issues:

Analyst Experience Criteria

The Lab QA Program, which EPA will use to approve laboratories for *Cryptosporidium* analyses under the LT2ESWTR, includes criteria for analyst experience. Principal analyst/supervisors (minimum of one per laboratory) should have a minimum of one year of continuous bench experience with *Cryptosporidium* and immunofluorescent assay (IFA) microscopy, a minimum of six months experience using EPA Method 1622 and/or 1623, and a minimum of 100 samples analyzed using EPA Method 1622 and/or 1623 (minimum 50 samples if the person was an analyst approved to conduct analysis for the Information Collection Rule Protozoan Method) for the specific analytical procedure they will be using.

Under the Lab QA Program, other analysts (no minimum number of analysts per laboratory) should have a minimum of six months of continuous bench experience with *Cryptosporidium* and IFA microscopy, a minimum of three months experience using EPA Method 1622 and/or 1623, and a minimum of 50 samples analyzed using EPA Method 1622 and/or 1623 (minimum 25 samples if the person was an analyst approved to conduct analysis for the Information Collection Rule Protozoan Method) for the specific analytical procedures they will be using.

The Lab QA Program criteria for principal analyst/supervisor experience are more rigorous than those in Methods 1622 and 1623, which are as follows: the analyst must have at least 2 years of college lecture and laboratory course work in microbiology or a closely related field. The analyst also must have at least 6 months of continuous bench experience with environmental protozoa detection techniques and IFA

microscopy, and must have successfully analyzed at least 50 water and/or wastewater samples for *Cryptosporidium*. Six months of additional experience in the above areas may be substituted for two years of college.

In seeking approval for an Information Collection Request, EPA requested comment on the Lab QA Program (67 FR 9731, March 4, 2002) (USEPA 2002c). A number of commenters stated that the analyst qualification criteria are restrictive and could make it difficult for laboratories to maintain adequate analyst staffing (and, hence, sample analysis capacity) in the event of staff turnover or competing priorities. Some commenters suggested that laboratories and analysts should be evaluated based on proficiency testing, and that analyst experience standards should be reduced or eliminated. (Comments are available in Office of Water docket, number W–01–17).

Another aspect of the analyst experience criteria is that systems may generate *Cryptosporidium* data for grandfathering under the LT2ESWTR using laboratories that meet the analyst experience requirement of Methods 1622 or 1623 but not the more rigorous principal analyst/supervisor experience requirement of the Lab QA Program.

EPA requests comment on whether the criteria for analyst experience in the Lab QA Program are necessary, whether systems are experiencing difficulty in finding laboratories that have passed the Lab QA Program to conduct *Cryptosporidium* analysis, and whether any of the Lab QA Program criteria should be revised to improve the LT2ESWTR lab approval process.

State Programs To Approve Laboratories for *Cryptosporidium* Analysis

Under today's proposal, systems must have *Cryptosporidium* samples analyzed by a laboratory approved under EPA's Lab QA Program, or an equivalent State laboratory approval program. Because States do not currently approve laboratories for *Cryptosporidium* analyses, EPA will initially assume responsibility for *Cryptosporidium* laboratory approval. EPA expects, however, that States will adopt equivalent approval programs for *Cryptosporidium* analysis under State laboratory certification programs. EPA requests comment on how to establish that a State approval program for *Cryptosporidium* analysis is equivalent to the Lab QA Program.

Specifically, should EPA evaluate State Approval programs to determine if they are equivalent to the Lab QA Program? EPA also requests comment on the elements that would constitute an equivalent State approval program for *Cryptosporidium* analyses, including the following: (1) Successful analysis of initial and ongoing blind proficiency testing samples prepared using flow cytometry, including a matrix and meeting EPA's pass/fail criteria (described in USEPA 2002c); (2) an on-site evaluation of the laboratory's sample processing and analysis procedures, including microscopic examination skills, by auditors who meet the qualifications of a principal analyst as set forth in the Lab QA Program (described in USEPA 2002c); (3) an on-site evaluation of the laboratory's personnel qualifications, quality assurance/quality control program, equipment, and recordkeeping procedures; (4) a data audit of the laboratories' QC data and monitoring data; and (5) use of the audit checklist used in the Lab QA Program or equivalent.

M. Requirements for Sanitary Surveys Conducted by EPA

1. Overview

In today's proposal, EPA is requesting comment on establishing requirements for public water systems with significant deficiencies as identified in a sanitary survey conducted by EPA under SDWA section 1445. These requirements would apply to surface water systems for which EPA is responsible for directly implementing national primary drinking water regulations (*i.e.*, systems not regulated by States with primacy). As described in this section, these requirements would ensure that systems in non-primacy States, currently Wyoming, and systems not regulated by States, such as Tribal systems, are subject to standards for sanitary surveys similar to those that apply to systems regulated by States with primacy.

2. Background

As established by the IESWTR in 40 CFR 142.16(b)(3), primacy States must conduct sanitary surveys for all surface water systems no less frequently than every three years for community water systems and no less frequently than every five years for noncommunity water systems. The sanitary survey is an onsite review and must address the following eight components: (1) Source, (2) treatment, (3) distribution system, (4) finished water storage, (5) pumps, pump facilities, and controls, (6) monitoring, reporting, and data verification, (7) system management and operation, and (8) operator compliance with State requirements.

Under the IESWTR, primacy States are required to have the appropriate rules or other authority to assure that systems respond in writing to significant deficiencies outlined in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey (40 CFR 142.16(b)(1)(ii)). Further, primacy States must have the authority to assure that systems take necessary steps to address significant deficiencies identified in sanitary survey reports if such deficiencies are within the control of the system and its governing body (40 CFR 142.16(b)(1)(iii)). The IESWTR did not define a significant deficiency, but required that primacy States describe in their primacy applications how they will decide whether a deficiency identified during a sanitary survey is significant for the purposes of the requirements stated in this paragraph (40 CFR 142.16(b)(3)(v)).

EPA conducts sanitary surveys under SDWA section 1445 for public water systems not regulated by primacy States (*e.g.*, Tribal systems, Wyoming). However, EPA does not have the authority required of primacy States under 40 CFR 142 to ensure that systems address significant deficiencies identified during sanitary surveys. Consequently, the sanitary survey requirements established by the IESWTR create an unequal standard. Systems regulated by primacy States are subject to the States' authority to require correction of significant deficiencies noted in sanitary survey reports, while systems for which EPA has direct implementation authority do not have to meet an equivalent requirement.

3. Request for Comment

In order to ensure that systems for which EPA has direct implementation authority address significant deficiencies identified during sanitary surveys, EPA requests comment on establishing either or both of the following requirements under 40 CFR 141 as part of the NPDWR established in the final LT2ESWTR:

(1) For sanitary surveys conducted by EPA under SDWA section 1445, systems would be required to respond in writing to significant deficiencies outlined in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(2) Systems would be required to correct significant deficiencies identified in sanitary survey reports if such deficiencies are within the control of the system and its governing body.

For the purposes of these requirements, a sanitary survey, as conducted by EPA, is an onsite review of the water source (identifying sources of contamination by using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations, and the distribution of safe drinking water. A significant deficiency includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that EPA determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

V. State Implementation

This section describes the regulations and other procedures and policies States will be required to adopt to implement the LT2ESWTR, if finalized as proposed today. States must continue to meet all other conditions of primacy in 40 CFR Part 142.

The Safe Drinking Water Act (Act) establishes requirements that a State or eligible Indian tribe must meet to assume and maintain primary enforcement responsibility (primacy) for its public water systems. These requirements include: (1) Adopting drinking water regulations that are no less stringent than Federal drinking water regulations, (2) adopting and implementing adequate procedures for enforcement, (3) keeping records and making reports available on activities that EPA requires by regulation, (4) issuing variances and exemptions (if allowed by the State), under conditions no less stringent than allowed under the Act, and (5) adopting and being capable of implementing an adequate plan for the provisions of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water supply supervision program as authorized under section 1413 of the Act. In addition to adopting basic primacy requirements specified in 40 CFR Part 142, States may be required to adopt special primacy provisions pertaining to specific regulations where implementation of the rule involves activities beyond general primacy provisions. States must include these regulation specific provisions in an application for approval of their program revision. Primacy requirements for today's proposal are discussed below.

To implement the proposed LT2ESWTR, States will be required to adopt revisions to:

§ 141.2—Definitions
§ 141.71—Criteria for avoiding filtration
§ 141.153—Content of the reports
§ 141.170—Enhanced filtration and disinfection
Subpart Q—Public Notification
New Subpart W—Additional treatment technique requirements for *Cryptosporidium*
§ 142.14—Records kept by States
§ 142.15—Reports by States
§ 142.16—Special primacy requirements

A. Special State Primacy Requirements

To ensure that a State program includes all the elements necessary for an effective and enforceable program under today's rule, a State primacy application must include a description of how the State will perform the following:

(1) Approve watershed control programs for the 0.5 log watershed control program credit in the microbial toolbox (see section IV.C.2);

(2) Assess significant changes in the watershed and source water as part of the sanitary survey process and determine appropriate follow-up action (see section IV.A);

(3) Determine that a system with an uncovered finished water storage facility has a risk mitigation plan that is adequate for purposes of waiving the requirement to cover the storage facility or treat the effluent (see section IV.E);

(4) Approve protocols for removal credits under the Demonstration of Performance toolbox option (see section IV.C.17) and for site specific chlorine dioxide and ozone CT tables (see section IV.C.14); and

(5) Approve laboratories to analyze for *Cryptosporidium*.

Note that a State program can be more, but not less, stringent than Federal regulations. As such, some of the elements listed here may not be applicable to a specific State program. For example, if a State chooses to require all finished water storage facilities to be covered or provide treatment and not to allow a risk mitigation plan to substitute for this requirement, then the description for item (3) would be inapplicable.

B. State Recordkeeping Requirements

The current regulations in § 142.14 require States with primacy to keep various records, including the following: Analytical results to determine compliance with MCLs, MRDLs, and treatment technique requirements; system inventories; State approvals; enforcement actions; and the issuance of variances and exemptions. The proposed LT2ESWTR will require States to keep additional records of the following, including all supporting information and an explanation of the technical basis for each decision:

- Results of source water *E. coli* and *Cryptosporidium* monitoring;
- *Cryptosporidium* bin classification for each filtered system, including any changes to initial bin classification based on review of the watershed during sanitary surveys or the second round of monitoring;
- Determination of whether each unfiltered system has a mean source water *Cryptosporidium* level above 0.01 oocysts/L;
- The treatment processes or control measures that each system employs to meet *Cryptosporidium* treatment requirements under the LT2ESWTR; this includes documentation to demonstrate compliance with required design and implementation criteria for receiving credit for microbial toolbox options, as specified in section IV.C;
- A list of systems required to cover or treat the effluent of an uncovered finished water storage facilities; and
- A list of systems for which the State has waived the requirement to cover or treat the effluent of an uncovered finished water storage facility, along with supporting documentation of the risk mitigation plan.

C. State Reporting Requirements

EPA currently requires in § 142.15 that States report to EPA information such as violations, variance and exemption status, and enforcement actions. The LT2ESWTR, as proposed, will add additional reporting requirements in the following area:

- The *Cryptosporidium* bin classification for each filtered system, including any changes to initial bin classification based on review of the watershed during sanitary surveys or the second round of monitoring;
- The determination of whether each unfiltered system has a mean source water *Cryptosporidium* level above 0.01 oocysts/L, including any changes to this determination based on the second round of monitoring.

D. Interim Primacy

On April 28, 1998, EPA amended its State primacy regulations at 40 CFR 142.12 to incorporate the new process identified in the 1996 SDWA Amendments for granting primary enforcement authority to States while their applications to modify their primacy programs are under review (63 FR 23362, April 28, 1998) (USEPA 1998f). The new process grants interim

primary enforcement authority for a new or revised regulation during the period in which EPA is making a determination with regard to primacy for that new or revised regulation. This interim enforcement authority begins on the date of the primacy application submission or the effective date of the new or revised State regulation, whichever is later, and ends when EPA makes a final determination. However, this interim primacy authority is only available to a State that has primacy (including interim primacy) for every existing NPDWR in effect when the new regulation is promulgated.

As a result, States that have primacy for every existing NPDWR already in effect may obtain interim primacy for this rule, beginning on the date that the State submits the application for this rule to USEPA, or the effective date of its revised regulations, whichever is later. In addition, a State that wishes to obtain interim primacy for future NPDWRs must obtain primacy for this rule. As described in Section IV.A, EPA expects to oversee the initial source water monitoring that will be conducted under the LT2ESWTR by systems serving at least 10,000 people, beginning 6 months following rule promulgation.

VI. Economic Analysis

This section summarizes the economic analysis (EA) for the LT2ESWTR proposal. The EA is an assessment of the benefits, both health and non-health related, and costs to the regulated community of the proposed regulation, along with those of regulatory alternatives that the Agency considered. EPA developed this EA to meet the requirement of SDWA section 1412(b)(3)(C) for a Health Risk Reduction and Cost Analysis (HRRCA), as well as the requirements of Executive Order 12866, Regulatory Planning and Review, under which EPA must estimate the costs and benefits of the LT2ESWTR. The full EA is presented in Economic Analysis for the Long Term 2 Enhanced Surface Water Treatment Rule (USEPA 2003a), which is available in the docket for today's proposal (*www.epa.gov.edocket/*).

Today's proposed LT2ESWTR is the second in a staged set of rules that address public health risks from microbial contamination of surface and GWUDI drinking water supplies and, more specifically, prevent *Cryptosporidium* from reaching consumers. As described in section I, the Agency promulgated the IESWTR and LT1ESWTR to provide a baseline of protection against *Cryptosporidium* in large and small drinking water systems, respectively. Today's proposed rule would achieve further reductions in *Cryptosporidium* exposure for systems with the highest vulnerability. This economic analysis considers only the incremental reduction in exposure from the two previously promulgated rules (IESWTR and LT1ESWTR) to the alternatives evaluated for the LT2ESWTR.

Both benefits and costs are determined as annualized present values. The process allows comparison of cost and benefit streams that are variable over a given time period. The time frame used for both benefit and cost comparisons is 25 years; approximately five years account for rule implementation and 20 years for the average useful life of the equipment used to comply with treatment technique requirements. The Agency uses social discount rates of both three percent and seven percent to calculate present values from the stream of benefits and costs and also to annualize the present value estimates (*see* EPA's Guidelines for Preparing Economic Analyses (USEPA 2000c) for a discussion of social discount rates). The LT2ESWTR EA (USEPA 2003a) also shows the undiscounted stream of both benefits and costs over the 25 year time frame.

A. What Regulatory Alternatives Did the Agency Consider?

Regulatory alternatives considered by Agency for the LT2ESWTR were developed through the deliberations of the Stage 2 M–DBP Federal Advisory Committee (described in section II). The Committee considered several general approaches for reducing the risk from *Cryptosporidium* in drinking water. As discussed in section IV.A.2, these approaches included both additional treatment requirements for all systems and risk-targeted treatment requirements for systems with the highest vulnerability to *Cryptosporidium* following implementation of the IESWTR and LT1ESWTR. In addition, the Committee considered related factors such as surrogates for *Cryptosporidium* monitoring and alternative monitoring strategies to minimize costs to small drinking water systems.

After considering these general approaches, the Committee focused on four specific regulatory alternatives for filtered systems (*see* Table VI–1). With the exception of Alternative 1, which requires all systems to achieve an additional 2 log (99%) reduction in *Cryptosporidium* levels, these alternatives incorporate a microbial framework approach. In this approach, systems are classified in different risk bins based on the results of source water monitoring. Additional treatment requirements are directly linked to the risk bin classification. Accordingly, these rule alternatives are differentiated by two criteria: (1) The *Cryptosporidium* concentrations that define the bin boundaries and (2) the degree of treatment required for each bin.

In assessing regulatory alternatives, EPA and the Advisory Committee were concerned with the following questions: (1) Do the treatment requirements adequately control *Cryptosporidium* concentrations in finished water? (2) How many systems will be required to add treatment? (3) What is the likelihood that systems with high source water *Cryptosporidium* concentrations will not be required to provide additional treatment (*i.e.*, be misclassified in a low risk bin)? and (4) What is the likelihood that systems with low source water *Cryptosporidium* concentrations will be required to provide unnecessary additional treatment (*i.e.*, misclassified in a high risk bin)?

The Committee reached consensus regarding additional treatment requirements for unfiltered systems and uncovered finished water storage facilities without formally identifying regulatory alternatives. Table VI–1 summarizes the four alternatives that were considered for filtered systems.

TABLE VI–1.—SUMMARY OF REGULATORY ALTERNATIVES FOR FILTERED SYSTEMS

Average source water *Cryptosporidium* monitoring result (oocysts/L)	Additional treatment requirements [1]
Alternative A1 2.0 log inactivation required for all systems **Alternative A2**	
< 0.03	No action.
≥ 0.03 and < 0.1	0.5 log.
≥ 0.1 and < 1.0	1.5 log.
≥ 1.0	2.5 log.
Alternative A3—Preferred Alternative	
< 0.075	No action.
≥ 0.075 and < 1.0	1 log.
≥ 1.0 and < 3.0	2 log.
≥ 3.0	2.5 log.
Alternative A4	
< 0.1	No action.
≥ 0.1 and < 1.0	0.5-log.
≥1.0	1.0 log.

[1] Note: ''Additional treatment requirements'' are in addition to levels already required under existing rules (*e.g.*, the IESWTR and LT1ESWTR).

B. What Analyses Support Selecting the Proposed Rule Option?

EPA has quantified benefits and costs of each of the regulatory alternatives in Table VI–1, as well as for the proposed requirements for unfiltered systems. Quantified benefits stem from estimated reductions in the incidence of cryptosporidiosis resulting from the regulation. To make these estimates, the Agency developed a two-dimensional Monte Carlo model that accounts for uncertainty and variability in key parameters like *Cryptosporidium* occurrence, infectivity, and treatment efficiency. Analyses involved estimating the baseline (pre-LT2ESWTR) risk from *Cryptosporidium* in drinking water, and then projecting the reductions in exposure and risk resulting from the additional treatment requirements of the LT2ESWTR. Costs result largely from the installation of additional treatment, with lesser costs due to monitoring and other implementation activities. Results of these analyses are summarized in the following subsections, and details are shown in the LT2ESWTR EA (USEPA 2003a).

Cryptosporidium occurrence significantly influences the estimated benefits and costs of regulatory alternatives. As discussed in section III.C, EPA analyzed data collected under the Information Collection Rule, the Information Collection Rule Supplemental Surveys of medium systems (ICRSSM), and the Information Collection Rule Supplemental Surveys of large systems (ICRSSL) to estimate the national occurrence distribution of *Cryptosporidium* in surface water. EPA evaluated these distributions independently when assessing benefits and costs for different regulatory alternatives. In most cases, results from the ICRSSM data set are within the range of results of the Information Collection Rule and ICRSSL data sets.

EPA selected a Preferred Regulatory Alternative for the LT2ESWTR, consistent with the recommendations of the Advisory Committee. As described next, this selection was based on the estimated impacts and feasibility of the alternatives shown in Table VI–1.

Alternative A1 (across-the-board 2-log inactivation) was not selected because it was the highest cost option and imposed costs but provided few benefits to systems with high quality source water (*i.e.*, relatively low *Cryptosporidium* risk). In addition, there were concerns about the feasibility of requiring almost every surface water treatment plant to install additional treatment processes (*e.g.*, UV or ozone) for *Cryptosporidium*.

Alternatives A2–A4 were evaluated based on several factors, including predictions of costs and benefits, performance of analytical methods for classifying systems in the risk bins, and other specific impacts (*e.g.*, impacts on small systems or sensitive subpopulations). Alternative A3 was recommended by the Advisory Committee because it provides significant health benefits in terms of avoided illnesses and deaths for an acceptable cost. In addition, the Agency believes this alternative is feasible with available analytical methods and treatment technologies.

Incremental costs and benefits of regulatory alternatives for the LT2ESWTR are shown in section VI.F, and the LT2ESWTR EA contains more detailed information about the benefits and costs of each regulatory option (USEPA 2003a).

C. What Are the Benefits of the Proposed LT2ESWTR?

As discussed previously, the LT2ESWTR is expected to substantially reduce drinking water related exposure to *Cryptosporidium*, thereby reducing both illness and death associated with cryptosporidiosis. As described in section II, cryptosporidiosis is an infection caused by *Cryptosporidium* and is an acute, typically self-limiting, illness with symptoms that include diarrhea, abdominal cramping, nausea, vomiting, and fever (Juranek, 1995). Cryptosporidiosis patients in sensitive subpopulations, such as infants, the elderly, and AIDS patients, are at risk for severe illness, including risk of death. While EPA has quantified and monetized the health benefits for reductions in endemic cryptosporidiosis that would result from the LT2ESWTR, the Agency was unable to quantify or monetize other health and non-health related benefits associated with this rule. These unquantified benefits are characterized next, followed by a summary of the quantified benefits.

1. Non-Quantifiable Health and Non-health Related Benefits

Although there are substantial monetized benefits that result from this rule due to reduced rates of endemic cryptosporidiosis, other potentially significant benefits of this rule remain unquantified and non-monetized. The unquantified benefits that result from this rule are summarized in Table VI–2 and are described in greater detail in the LT2ESWTR EA (USEPA 2003a).

TABLE VI–2.—SUMMARY OF NONQUANTIFIED BENEFITS

Benefit type	Potential effect on benefits	Comments
Reducing outbreak risks and response costs	Increase	Some outbreaks are caused by human or equipment failures that may occur even with the proposed new requirements; however, by adding barriers of protection for some systems, the rule will reduce the possibility of such failures leading to outbreaks.
Reducing averting behavior (e.g., boiling tap water or purchasing bottled water).	Increase / No Change	Averting behavior is associated with both out-of-pocket costs (*e.g.*, purchase of bottled water) and opportunity costs (*e.g.*, time requiring to boil water) to the consumer. Reductions in averting behavior are expected to have a positive impact on benefits from the rule.
Improving aesthetic water quality	Increase	Some technologies installed for this rule (*e.g.*, ozone) are likely to reduce taste quality and odor problems.
Reducing risk from co-occurring and emerging pathogens.	Increase	Although focused on removal of *Cryptosporidium* from drinking water, systems that change treatment processes will also increase removal of pathogens that the rule does not specifically regulate. Additional benefits will accrue.
Increased source water monitoring	Increase	The greater understanding of source water quality that results from monitoring may enhance the ability of plants to optimize treatment operations in ways other than those addressed in this rule.
Reduced contamination due to covering on treating finished water storage facilities.	Increase	Although insufficient data were available to quantify benefits, the reduction of contaminants introduced through uncovered finished water storage facilities would produce positive public health benefits.

Source: Chapter 5 of the LT2ESWTR Economic Analysis (USEPA 2003a).

2. Quantifiable Health Benefits

EPA quantified benefits for the LT2ESWTR based on reductions in the risk of endemic cryptosporidiosis. Several categories of monetized benefits were considered in this analysis.

First, EPA estimated the number of cases expected to result in premature mortality (primarily for members of sensitive subpopulations such as AIDS patients). In order to estimate the benefits from deaths avoided as a result of the rule, EPA multiplied the estimates for number of illnesses avoided by a projected mortality rate. This mortality rate was developed using mortality data from the Milwaukee cryptosporidiosis outbreak of 1993 (described in section II), with adjustments to account for the subsequent decrease in the mortality rate among people with AIDS and for the difference between the 1993 Milwaukee AIDS rate and the current national rate. EPA estimated a mortality rate of 16.6 deaths per 100,000 illnesses for those served by unfiltered systems and a mortality rate of 10.6 deaths per 100,000 illnesses for those served by filtered systems. These different rates are associated with the incidence of AIDS in populations served by unfiltered and filtered systems. A complete discussion on how EPA derived these rates can be found in subchapter 5.2 of the LT2ESWTR EA (USEPA 2003a).

Reductions in mortalities were monetized using EPA's standard methodology for monetizing mortality risk reduction. This methodology is based on a distribution of value of statistical life (VSL) estimates from 26 labor market and stated preference studies, with a mean VSL of $6.3M in 2000, and a 5th to 95th percentile range of $1.0 to $14.5. A more detailed discussion of these studies and the VSL estimate can be found in EPA's Guidelines for Preparing Economic Analyses (USEPA 2000c). A real income growth factor was applied to these estimates of approximately 2.3% per year for the 20 year time span following implementation. Income elasticity for VSL was estimated as a triangular distribution that ranged from 0.08 to 1.00, with a mode of 0.40. VSL values for the 20 year span are shown in the LT2 EA in Exhibit C.13 (USEPA 2003a).

The substantial majority of cases are not expected to be fatal and the Agency separately estimated the value of non-fatal illnesses avoided that would result from the LT2ESWTR. For these, EPA first divided projected cases into three categories, mild, moderate, and severe, and then calculated a monetized value per case avoided for each severity level. These were then combined into a weighted average value per case based on the relative frequency of each severity level. According to a study conducted by Corso *et al.* (2003), the majority of illness falls into the mild category (88 percent). Approximately 11 percent of illness falls into the moderate category, which is defined as those who seek medical treatment but are not hospitalized. The final one percent have severe symptoms that result in hospitalization. EPA estimated different medical expenses and time losses for each category.

Benefits for non-fatal cases were calculated using a cost-of-illness (COI) approach. Traditional COI valuations focus on medical costs and lost work time, and leave out significant categories of benefits, specifically the reduced utility from being sick (*i.e.*, lost personal or non-work time, including activities such as child care, homemaking, community service, time spent with family, and recreation), although some COI studies also include an estimate for unpaid labor (household production) valued at an estimated wage

rate designed to reflect the market value of such labor (*e.g.,* median wage for household domestic labor). This reduced utility is variously referred to as lost leisure or a component of pain and suffering. Ideally, a comprehensive willingness to pay (WTP) estimate would be used that includes all categories of loss in a single number. However, a review of the literature indicated that the available studies were not suitable for valuing cryptosporidiosis; hence, estimates from this literature are inappropriate for use in this analysis. Instead, EPA presents two COI estimates: a traditional approach that only includes valuation for medical costs and lost work time (including some portion of unpaid household production); and an enhanced approach that also factors in valuations for lost unpaid work time for employed people, reduced utility (or sense of well-being) associated with decreased enjoyment of time spent in non-work activities, and lost productivity at work on days when workers are ill but go to work anyway.

Table VI–3 shows the various categories of loss and how they were valued for each estimate for a ''typical'' case (weighted average of severity level—see LT2ESWTR EA—Chapter 5 for more details (USEPA 2003a).

TABLE VI–3.—TRADITIONAL AND ENHANCED COI FOR CRYPTOSPORIDIOSIS

Loss category	Traditional COI	Enhanced COI
Direct Medical Costs	$93.82	$93.82
Lost Paid Work Days	109.88	109.88
Lost Unpaid Work Days [1]	20.22	40.44
Lost Caregiver Days [2]	20.70	54.31
Lost Leisure Time [3]	[5]	333.96
Lost Productivity at Work	[5]	112.49
Total [4]	244.62	744.89

[1] Assigned to 38.2% of the population not engaged in market work; assumes 40 hr, unpaid work week, valued at $5.46/hr in traditional COI and $10.92/hr in enhanced COI. Does not include lost unpaid work for employed people and may not include all unpaid work for people outside the paid labor force.
[2] Values lost work or leisure time for people caring for the ill. Traditional approach does not include lost leisure time.
[3] Includes child care and homemaking (to the extent not covered in lost unpaid work days above), time with family, and recreation for people within and outside the paid labor force.
[4] Detail may not calculate to totals due to independent rounding; Source: Appendix L in LT2ESWTR EA (USEPA 2003a).
[5] Not included.

The various loss categories were calculated as follows: Medical costs are a weighted average across the three illness severity levels of actual costs for doctor and emergency room visits, medication, and hospital stays. Lost paid work represents missed work time of paid employees, valued at the median pre-tax wage, plus benefits of $18.47 hour. The average number of lost work hours per case is 5.95 (this assumes that 62 percent of the population is in the paid labor force and the loss is averaged over seven days). Medical costs and lost work days reflect market transactions. Medical costs are always included in COI estimates and lost work days are usually included in COI estimates.

In the traditional COI estimate, an equivalent amount of lost unpaid work time was assigned to the 38% of the population that are not in the paid labor force. This includes homemakers, students, children, retires, and unemployed persons. EPA did not attempt to calculate what percent of cases falls in each of these five groups, or how many hours per week each group works, but rather assumed an across-the-board 40 hour unpaid work week. This time is valued at $5.46 per hour, which is one half the median post-tax wage, (since work performed by these groups is not taxed). This is approximately the median wage for paid household domestic labor.

In the enhanced COI estimate, all time other than paid work and sleep (8 hours per day) is valued at the median after tax wage, or $10.92 per hour. This includes lost unpaid work (*e.g.*, household production) and leisure time for people within and outside the paid labor force. Implicit in this approach, is that people would pay the same amount not to be sick during their leisure time as they require to give up their leisure time to work (*i.e.*, the after tax wage). In reality, people might be willing to pay either more than this amount (if they were very sick and suffering a lot) or less than this amount (if they were not very sick and still got some enjoyment out of activities such as resting, reading and watching TV), not to be sick. Multiplying 16 hours by $10.92 gives a value of about $175.00 for a day of ''lost'' unpaid work and leisure (*i.e.*, lost utility of being sick).

An estimate of lost unpaid work days for the enhanced approach was made by assigning the value of $10.92 per hour to the same number of unpaid work hours valued in the traditional COI approach (*i.e.*, 40 unpaid work hours per week for people outside the paid labor force). Lost unpaid work for employed people and any unpaid labor beyond 40 hours per week for those not in the labor market is shown as lost leisure time in Table VI–3 for the enhanced approach and is not included in the traditional approach. In addition, for days when an individual is well enough to work but still experiencing symptoms, such as diarrhea, the enhanced estimate also includes a 30% loss of work and leisure productivity, based on a study of giardiasis illness (Harrington *et al.* 1985) which is similar to cryptosporidiosis. Appendix P in the EA describes similar productivity losses for other illnesses such as influenza (35%–73% productivity losses). In the traditional COI analysis, productivity losses are not included for either work or non-work time.

The Agency believes that losses in productivity and lost leisure time are unquestionably present and that these categories have positive value; consequently, the traditional COI estimate understates the true value of these loss categories. EPA notes that these estimates should not be regarded as upper and lower bounds. In particular, the enhanced COI estimate may not fully incorporate the value of pain and suffering, as people may be willing to pay more than $201 to avoid a day of illness. The traditional COI estimate includes a valuation for a lost 40 hour work week for all persons not in the labor force, including children and retirees. This may be an overstatement of lost productivity for these groups, which would depend on the impact of such things as missed

school work or volunteer activities that may be affected by illness.

As with the avoided mortality valuation, the real wages used in the COI estimates were increased by a real income growth factor that varies by year, but is the equivalent of about 2.3% over the 20 year period. This approach of adjusting for real income growth was recommended by the SAB (USEPA 2000e) because the median real wage is expected to grow each year (by approximately 2.3%)—the median real wage is projected to be $38,902 in 2008 and $59,749 in 2027. Correspondingly, the real income growth factor of the COI estimates increases by the equivalent of 2.3% per year (except for medical costs, which are not directly tied to wages). This approach gives a total COI valuation in 2008 of $268.92 for the traditional COI estimate and $931.06 for the enhanced COI estimate; the valuation in 2027 is $362.75 for the traditional COI estimate and $1,429.99 for the enhanced COI estimate. There is no difference in the methodology for calculating the COI over this 20 year period of implementation; the change in valuation is due to the underlying change in projected real wages.

Table VI–4 summarizes the annual cases of cryptosporidiosis illness and associated deaths avoided due to the LT2ESWTR proposal. The proposed rule, on average, is expected to reduce 256,000 to 1,019,000 illnesses and 37 to 141 deaths annually after full implementation (range based on the ICRSSL, ICRSSM, and Information Collection Rule data sets).

TABLE VI–4.—SUMMARY OF ANNUAL AVOIDED ILLNESS AND DEATHS

Data set	Annual illinesses avoided			Annual deaths avoided		
	Mean	90 percent confidence bound		Mean	90 percent confidence bound	
		Lower (5th %ile)	Upper (95th %ile)		Lower (5th %ile)	Upper (95th %ile)
Annual Total After Full Implementation						
ICR	1,018,915	169,358	2,331,467	141	25	308
ICRSSL	256,173	45,292	560,648	37	7	78
ICRSSM	498,363	84,724	1,177,415	70	13	157
Annual Average Over 25 years						
ICR	720,668	119,694	1,647,796	100	18	218
ICRSSL	181,387	32,179	396,845	26	5	55
ICRSSM	352,611	59,942	833,290	50	9	111

Source: The LT2ESWTR Economic Analysis (USEPA 2003a).

Tables VI–5a and VI–5b show the monetized present value of the benefit for reductions in endemic cryptosporidiosis estimated to result from the LT2ESWTR for the enhanced and traditional COI values, respectively. Estimates are given for the Information Collection Rule, ICRSSL, and ICRSSM occurrence data sets.

With the enhanced COI and a three percent discount rate, the annual present value of the mean benefit estimate ranges from $374 million to $1.4 billion, with a 90 percent confidence bound of $52 million to $198 million at the lower 5th percentile and $959 million to $3.7 billion at the upper 95th percentile; at a seven percent discount rate, this estimate ranges from $318 million to $1.2 billion, with a 90 percent confidence bound of $44 million to $168 million at the lower 5th percentile and $816 million to $3.1 billion at the upper 95th percentile. With the traditional COI, the corresponding benefit estimate at a three percent discount rate ranges from $253 million to $967 million, with a 90 percent confidence bound of $27 million to $105 million at the lower 5th percentile and $713 million to $2.7 billion at the upper 95th percentile; for a seven percent discount rate, this estimate ranges from $216 million to $826 million, with a 90 percent confidence bound of $23 million to $89 million at the lower 5th percentile and $610 million to $2.3 billion at the upper 95th percentile. None of these values include the unquantified and non-monetized benefits discussed previously.

TABLE VI–5A.—SUMMARY OF QUANTIFIED BENEFITS—ENHANCED COI

[$millions, 2000$]

Data set	Value of benefits—Enhanced COI [1]		
	Mean	90 percent confidence bound	
		Lower (5th %ile)	Upper (95th %ile)
Annualized Value (at 3%, 25 Years)			
ICR	$1,445	$198	3,666
ICRSSL	374	52	959
ICRSSM	715	96	1,849
Annualized Value (at 7%, 25 Years)			
ICR	1,230	168	3,120

TABLE VI–5A.—SUMMARY OF QUANTIFIED BENEFITS—ENHANCED COI—Continued

[$millions, 2000$]

Data set	Value of benefits—Enhanced COI [1]		
	Mean	90 percent confidence bound	
		Lower (5th %ile)	Upper (95th %ile)
ICRSSL	318	44	816
ICRSSM	609	81	1,577

[1] The traditional COI only includes valuation for medical costs and lost work time (including some portion of unpaid household production). The enhanced COI also factors in valuations for lost personal time (non-worktime) such as child care and homemaking (to the extent not covered by the traditional COI), time with family, and recreation, and lost productivity at work on days when workers are ill but go to work anyway. Source: The LT2ESWR Economic Analysis (USEPA 2003a).

TABLE VI–5B.—SUMMARY OF QUANTIFIED BENEFITS—TRADITIONAL COI

[($Millions, 2000$]

Data Set	Value of Benefits—Traditional COI [1]		
	Mean	90 percent confidence bound	
		Lower (5th %ile)	Upper 95th %ile)
Annualized Value (at 3%, 25 Years)			
ICR	$967	$105	$2,713
ICRSSL	253	27	713
ICRSSM	481	50	1,372
Annualized Value (at 7%, 25 Years)			
ICR	826	89	2,315
ICRSSL	216	23	610
ICRSSM	411	43	1,172

[1] The traditional COI only includes valuation for medical costs and lost work time (including some portion of unpaid household production). The enhanced COI also factors in valuations for lost personal time (non-worktime) such as child care and homemaking (to the extent not covered by the traditional COI), time with family, and recreation, and lost productivity at work on days when workers are ill but go to work anyway. Source: The LT2ESWTR Economic Analysis (USEPA 2003a).

a. Filtered systems. Benefits to the approximately 161 million people served by filtered surface water and GWUDI systems range from 88,000 to 472,000 reduction in mean annual cases of endemic illness based on ICRSSL, ICRSSM, and ICR data sets. In addition, premature mortality is expected to be reduced by an average of 9 to 50 deaths annually.

b. Unfiltered systems. The 12 million people served by unfiltered surface water or GWUDI systems will see a significant reduction in cryptosporidiosis as a result of the LT2ESWTR. In this population, the rule is expected to reduce approximately 168,000 to 547,000 cases of illness and 28 to 91 premature deaths annually.

For unfiltered systems, only the Information Collection Rule data set is used to directly calculate illness reduction because it is the only data set that includes sufficient information on unfiltered systems. Illness reduction in unfiltered systems was estimated for the ICRSSL and ICRSSM data sets by multiplying the Information Collection Rule unfiltered system result by the ratio, for the quantity estimated, between filtered system results from the supplemental survey data set (SSM or SSL) and filtered system results from the Information Collection Rule.

3. Timing of Benefits Accrual (Latency)

In previous rulemakings, some commenters have argued that the Agency should consider an assumed time lag or latency period in its benefits calculations. The Agency has not conducted a latency analysis for this rule because cryptosporidiosis is an acute illness; therefore, very little time elapses between exposure, illness, and mortality. However, EPA does account for benefits and costs that occur in future years by converting these to present value estimates.

D. What Are the Costs of the Proposed LT2ESWTR?

In order to estimate the costs of today's proposed rule, the Agency considered impacts on public water systems and on States (including territories and EPA implementation in non-primacy States). EPA assumed that systems would be in compliance with the IESWTR, which has a compliance date of January 2002 for large systems and the LT1ESWTR, which has a compliance date of January 2005 for small systems. Therefore, this cost estimate only considers the additional requirements that are a direct result of the LT2ESWTR. More detailed information on cost estimates are described next and a complete discussion can be found in chapter 6 of the LT2ESWTR EA (USEPA 2003a). An detailed discussion of the proposed rule provisions is located in section IV of this preamble.

1. Total Annualized Present Value Costs

Tables VI–6a and VI–6b summarize the annualized present value cost estimates for the proposed LT2ESWTR at three percent and seven percent discount rates, respectively. The mean annualized present value costs of the proposed LT2ESWTR are estimated to range from approximately $73 to $111 million using a three percent discount rate and $81 to $121 million using a seven percent discount rate. This range in mean cost estimates is associated with the ICRSSL and Information Collection Rule *Cryptosporidium* occurrence data sets. Using different occurrence data sets results in different bin classifications and, thus, impacts the cost of the rule. Results for the ICRSSM fall within the range of results for the Information Collection Rule and ICRSSL. In addition to mean estimates of costs, the Agency calculated 90 percent confidence bounds by considering the uncertainty in *Cryptosporidium* occurrence estimates and around the mean unit technology costs (USEPA 2003a).

Public water systems will incur approximately 99 percent of the rule's total annualized present value costs. States incur the remaining rule costs. Table VI–7 shows the undiscounted initial capital and one-time costs broken out by rule component. A comparison of annualized present value costs among the rule alternatives considered by the Agency is located in subsection VI.F. and in the LT2ESWTR EA (USEPA 2003a). Using a present value allows costs and benefits that occur during different time periods to be compared. For any future cost, the higher the discount rate, the lower the present value. Specifically, a future cost evaluated at a seven percent discount rate will always result in a lower total present value cost than the same future cost evaluated at a three percent discount rate.

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Table VI-6a.– Annualized Present Value Costs for the Proposed LT2ESWTR
(three percent discount rate, $ millions, 2000$)

Type of Cost	Range of Occurrence Means with Cost Uncertainty ($Millions, 2000$)						Bounds of Occurrence Range with Cost Uncertainty ($Millions, 2000$)					
	Serving ≤ 10k		Serving > 10K		Total		Serving ≤ 10k		Serving > 10K		Total	
	Mean ICRSSL	Mean ICR	Mean ICRSSL	Mean ICR	Mean ICRSSL	Mean ICR	5th Percentile ICRSSL	95th Percentile ICR	5th Percentile ICRSSL	95th Percentile ICR	5th Percentile ICRSSL	95th Percentile ICR
	A	**B**	**C**	**D**	**E = A + C**	**F = B + D**	**G**	**H**	**I**	**J**	**K = G + I**	**L = H + J**
Treatment Mean	$5.32	$9.56	$56.79	$88.82	$62.10	$98.38	$3.48	$10.33	$38.40	$96.48	$41.88	$106.81
Treatment Uncertainty Bound	$4.83	$10.29	$49.69	$99.56	$54.51	$109.85	$3.15	$11.12	$33.46	$108.26	$36.62	$119.38
Uncovered Reservoirs Mean	$0.01	$0.01	$5.40	$5.40	$5.40	$5.40	$0.01	$0.01	$5.40	$5.40	$5.40	$5.40
Uncovered Reservoirs Uncertainty Bound	$0.00	$0.01	$4.60	$6.20	$4.61	$6.20	$0.00	$0.01	$4.60	$6.20	$4.61	$6.20
Implementation	$0.07	$0.07	$0.02	$0.02	$0.09	$0.09	$0.07	$0.07	$0.02	$0.02	$0.09	$0.09
Monitoring	$1.48	$1.99	$1.48	$1.48	$2.95	$3.46	$1.11	$2.14	$1.48	$1.48	$2.59	$3.62
Future Monitoring	$1.06	$1.35	$0.94	$0.82	$2.00	$2.17	$0.81	$1.44	$1.02	$0.79	$1.82	$2.24
Benchmarking	$0.00	$0.00	$0.00	$0.00	$0.00	$0.01	$0.00	$0.00	$0.00	$0.00	$0.00	$0.01
State Implementation	--	--	--	--	$0.38	$0.38	--	--	--	--	$0.38	$0.38
State Monitoring	--	--	--	--	$0.47	$0.47	--	--	--	--	$0.47	$0.47
State Benchmarking	--	--	--	--	$0.00	$0.00	--	--	--	--	$0.00	$0.00
State Technology Reporting	--	--	--	--	$0.09	$0.15	--	--	--	--	$0.07	$0.15
TOTALS												
National (System + State)					$73.48	$110.51					$52.70	$119.16
System	$7.92	$12.97	$64.62	$96.54	$72.54	$109.51	$5.48	$13.98	$46.31	$104.17	$51.79	$118.16
State/Primacy Agency					$0.94	$0.99					$0.92	$1.00

Source: Chapter 6 of the *LT2ESWTR Economic Analysis* (USEPA 2003a)

Table VI-6b.– Annualized Present Value Costs for the Proposed LT2ESWTR
(seven percent discount rate, $ millions, 2000$)

Type of Cost	Range of Occurrence Means with Cost Uncertainty ($Millions, 2000$)						Bounds of Occurrence Range with Cost Uncertainty ($Millions, 2000$)					
	Serving ≤ 10k		Serving > 10K		Total		Serving ≤ 10k		Serving > 10K		Total	
	Mean ICRSSL	Mean ICR	Mean ICRSSL	Mean ICR	Mean ICRSSL	Mean ICR	5th Percentile ICRSSL	95th Percentile ICR	5th Percentile ICRSSL	95th Percentile ICR	5th Percentile ICRSSL	95th Percentile ICR
	A	**B**	**C**	**D**	**E = A + C**	**F = B + D**	**G**	**H**	**I**	**J**	**K = G + I**	**L = H + J**
Treatment Mean	$5.07	$9.10	$62.26	$97.13	$67.33	$106.24	$3.33	$9.83	$42.10	$105.53	$45.43	$115.36
Treatment Uncertainty Bound	$4.58	$9.84	$54.11	$109.46	$58.69	$119.30	$2.99	$10.63	$36.44	$119.06	$39.43	$129.69
Uncovered Reservoirs Mean	$0.01	$0.01	$6.41	$6.41	$6.42	$6.42	$0.01	$0.01	$6.41	$6.41	$6.42	$6.42
Uncovered Reservoirs Uncertainty Bound	$0.01	$0.01	$5.41	$7.42	$5.41	$7.43	$0.01	$0.01	$5.41	$7.42	$5.41	$7.43
Implementation	$0.09	$0.09	$0.03	$0.03	$0.12	$0.12	$0.09	$0.09	$0.03	$0.03	$0.12	$0.12
Monitoring	$1.90	$2.54	$2.08	$2.08	$3.99	$4.63	$1.44	$2.74	$2.08	$2.08	$3.53	$4.82
Future Monitoring	$0.97	$1.22	$0.96	$0.84	$1.93	$2.07	$0.74	$1.31	$1.04	$0.81	$1.78	$2.12
Benchmarking	$0.00	$0.00	$0.00	$0.00	$0.00	$0.01	$0.00	$0.00	$0.00	$0.01	$0.00	$0.01
State Implementation	--	--	--	--	$0.55	$0.55	--	--	--	--	$0.55	$0.55
State Monitoring	--	--	--	--	$0.52	$0.52	--	--	--	--	$0.52	$0.52
State Benchmarking	--	--	--	--	$0.00	$0.00	--	--	--	--	$0.00	$0.00
State Technology Reporting	--	--	--	--	$0.08	$0.12	--	--	--	--	$0.06	$0.13
TOTALS												
National (System + State)					$80.93	$120.68					$58.41	$130.05
System	$8.04	$12.97	$71.74	$106.50	$79.78	$119.48	$5.61	$13.98	$51.66	$114.86	$57.28	$128.84
State/Primacy Agency					$1.15	$1.20					$1.13	$1.21

Source: Chapter 6 of the *LT2ESWTR Economic Analysis* (USEPA 2003a)

Table VI-7.– Initial Capital and One-time Costs for the LT2ESWTR

Type of Cost	Range of Occurrence Means with Cost Uncertainty ($Millions, 2000$)						Bounds of Occurrence Range with Cost Uncertainty ($Millions, 2000$)					
	Serving ≤ 10k		Serving > 10K		Total		Serving ≤ 10k		Serving > 10K		Total	
	Mean ICRSSL	Mean ICR	Mean ICRSSL	Mean ICR	Mean ICRSSL	Mean ICR	5th Percentile ICRSSL	95th Percentile ICR	5th Percentile ICRSSL	95th Percentile ICR	5th Percentile ICRSSL	95th Percentile ICR
	A	**B**	**C**	**D**	**E = A + C**	**F = B + D**	**G**	**H**	**I**	**J**	**K = G + I**	**L = H + J**
Treatment Mean	$68.72	$122.30	$951.14	$1,469.50	$1,019.86	$1,591.80	$45.49	$132.02	$643.23	$1,597.51	$688.72	$1,729.52
Treatment Uncertainty Bound	$59.87	$135.98	$805.46	$1,690.02	$865.33	$1,826.00	$39.48	$146.63	$542.26	$1,840.04	$581.74	$1,986.67
Uncovered Reservoirs Mean	$0.07	$0.07	$64.28	$64.28	$64.35	$64.35	$0.07	$0.07	$64.28	$64.28	$64.35	$64.35
Uncovered Reservoirs Uncertainty Bound	$0.05	$0.08	$52.09	$76.56	$52.15	$76.65	$0.05	$0.08	$52.09	$76.56	$52.15	$76.65
Implementation	$1.23	$1.23	$0.33	$0.33	$1.56	$1.56	$1.23	$1.23	$0.33	$0.33	$1.56	$1.56
Monitoring	$28.90	$39.05	$26.88	$26.88	$55.78	$65.93	$21.67	$42.07	$26.88	$26.88	$48.55	$68.95
Future Monitoring	$26.99	$34.54	$22.01	$19.29	$49.01	$53.83	$20.46	$37.02	$23.80	$18.55	$44.26	$55.57
Benchmarking	$0.02	$0.06	$0.05	$0.08	$0.08	$0.14	$0.02	$0.06	$0.03	$0.09	$0.05	$0.15
State Implementation	--	--	--	--	$6.68	$6.68	--	--	--	--	$6.68	$6.68
State Monitoring	--	--	--	--	$10.45	$10.45	--	--	--	--	$10.45	$10.45
State Benchmarking	--	--	--	--	$0.04	$0.07	--	--	--	--	$0.03	$0.08
TOTALS												
National (System + State)					$1,207.79	$1,794.80					$864.63	$1,937.30
System	$125.93	$197.24	$1,064.70	$1,580.37	$1,190.63	$1,777.60	$88.93	$212.47	$758.55	$1,707.63	$847.48	$1,920.10
State/Primacy Agency					$17.17	$17.20					$17.15	$17.20

Source: Chapter 6 of the *LT2ESWTR Economic Analysis* (USEPA 2003a)

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2. Water System Costs

The proposed LT2ESWTR applies to all community, non-transient non-community, and transient non-community water systems that use surface water or GWUDI as a source (including both filtered and unfiltered systems). EPA has estimated the cost impacts for these three types of public drinking water systems. As shown in Table VI–6a and VI–6b, the mean annualized present value costs for all drinking water systems range from approximately $73 to $111 million using a three percent discount rate ($81 to $121 million using a seven percent discount rates).

The majority of costs of the rule result from treatment changes incurred by filtered and unfiltered systems. Table VI–8 shows the number of filtered and unfiltered systems that will incur costs by rule provision. Subsection VI.D.2.b discusses treatment costs for filtered system and subsection VI.D.2.c discusses treatment options for unfiltered systems. All non-purchased surface water and GWUDI systems subject to the LT2ESWTR (including filtered and unfiltered systems) will incur one-time costs that include time for staff training on rule requirements. Systems will incur monitoring costs to assess source water *Cryptosporidium* levels, though monitoring requirements vary by system size (large vs. small) and system type (filtered vs. unfiltered). A discussion of future monitoring that will occur six years after initial bin assignments can be found in subsection VI.D.2.e.

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Table VI-8.– Number of Filtered and Unfiltered Systems and Plants Expected to Incur Costs[1]

Dataset	Nonpurchased Systems and Plants							Systems with Uncovered Reservoirs
	System Size (population served)	Systems Incurring Implementation Costs	Source Water Monitoring - Plants				Plants Adding Treatment	
			Initial *E. Coli* Monitoring	Initial *Crypto* Monitoring	Future *E. coli* Monitoring	Future *Crypto* Monitoring		
		A	B	C	D	E	F	G
ICR	≤ 10,000	5,682	5,792	2,016	5,122	1,782	2,251	32
	> 10,000	1,384	1,774	1,774	1,273	1,273	733	106
	Total	7,066	7,565	3,789	6,395	3,056	2,984	138
ICRSSL	≤ 10,000	Same as ICR		1,295	5,409	1,209	1,463	Same as ICR
	> 10,000			1,774	1,453	1,453	481	
	Total			3,069	6,862	2,662	1,944	
ICRSSM	≤ 10,000	Same as ICR		1,575	5,347	1,454	1,768	Same as ICR
	> 10,000			1,774	1,386	1,386	578	
	Total			3,349	6,733	2,840	2,346	

[1]Numbers shown for plants monitoring include nonpurchased plants only. Numbers shown for plants adding treatment include both nonpurchased plants and a fraction of plants purchasing water that could not be linked to a nonpurchased plant. Source: Chapter 6 of the *LT2ESWTR Economic Analysis* (USEPA 2003a)

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a. *Source water monitoring costs.* Source water monitoring costs are structured on a per-plant basis. Also, as with implementation activities, purchased plants are assumed not to treat source water and will not have any monitoring costs. There are three types of monitoring that plants may be required to conduct—turbidity, *E. coli* and *Cryptosporidium*. Source water turbidity is a common water quality parameter used for plant operational control. Also, to meet SWTR, LT1ESWTR and IESWTR requirements, most water systems have turbidity analytical equipment in-house and operators are experienced with turbidity measurement. Thus, EPA assumes that the incremental turbidity monitoring burden associated with the LT2ESWTR is negligible.

Filtered plants in small systems initially will be required to conduct one year of biweekly *E. coli* source water monitoring. These plants will be required to monitor for *Cryptosporidium* if, as a result of initial bin classification, *E. coli* levels exceed the following concentrations: (1) Annual mean > 10 *E. coli*/100 mL for lakes and reservoir sources, and (2) annual mean > 50 *E. coli*/100 mL for flowing stream sources. EPA estimated the percent of small plants that would be triggered into *Cryptosporidium* monitoring as being equal to the percent of large plants that would fall into any bin requiring additional treatment.

Estimates of laboratory fees, shipping costs, labor hours for sample collection, and hours for reporting results were used to predict system costs for initial source water monitoring under the LT2ESWTR. Table VI–9 summarizes the present value of monitoring costs for initial bin classification. Total present value monitoring costs for initial bin classification range from $46 million to $60 million depending on the occurrence data set and discount rate. Appendix D of the LT2ESWTR EA provides a full explanation of how these costs were developed (USEPA 2003a).

TABLE VI–9.—SUMMARY OF PRESENT VALUE MONITORING COSTS FOR INITIAL BIN CLASSIFICATION

($millions, 2000$)

System Size	ICR (3%) A	ICR (7%) B	ICRSSL (3%) C	ICRSSL (7%) D	ICRSSM (3%) E	ICRSSM (7%) F
≤10K	$34.6	$29.7	$25.7	$22.2	$29.2	$25.1
10K	25.7	24.3	25.7	24.3	25.7	24.3
Total	60.3	54.0	51.4	46.5	54.9	49.4

Source: Chapter 6 of the LT2ESWTR Economic Analysis (USEPA 2003a).

b. *Filtered systems treatment costs.* The Agency calculated treatment costs by estimating the number of plants that will be adding treatment technologies and coupling these estimates with unit costs ($/plant) of the selected technologies. Table VI–10 shows the number of plants estimated to select different treatment technologies; Table VI–11 summarizes the present value treatment costs and annualized present value costs for both filtered and unfiltered systems.

To estimate the number of filtered plants that would select a particular treatment technology, the Agency followed a two step process. First, the number of plants that must make treatment changes to meet the proposed LT2ESWTR requirement was determined by the binning process. Second, EPA predicted the treatment technologies that plants would choose to meet the proposed requirements. The Agency used a ''least-cost decision tree'' as the basic framework for determining the treatment technology selection. In other words, EPA assumed that drinking water plants would select the least expensive technology or combination of technologies to meet the log removal requirements of a given action bin. However, these technology selections were constrained by maximum use percentages, which recognize that some plants will not be able to implement certain technologies because of site-specific conditions. In addition, certain potentially lower cost components of the microbial toolbox, such as changes to the plant intake, were not included because the Agency lacked data to estimate the number of plants that could select it. These limitations on technology use may result in an overestimate of costs. An in-depth discussion of the technology selection methodology and unit cost estimates can be found in appendices E and F of the proposed LT2ESWTR EA (USEPA 2003a).

TABLE VI–10.—TECHNOLOGY SELECTION FORECASTS FOR FILTERED PLANTS

	Data set		
	ICR	ICRSSL	ICRSSM
Technology Selections			
Bag Filter 1.0 Log	1,545	1,236	1,441
Cartridge Filter 2.0 Log	190	17	52
CL02 0.5 Log	77	60	70
Combined Filter Performance 0.5 Log	16	12	14
In-bank Filtration 1.0 Log	5	3	4
MF/UF 2.5 Log	10	3	5
Technology Selections [1]			
03 0.5 Log	26	17	21
03 1.0 Log	24	18	21
03 2.0 Log	9	1	2
Secondary Filter 1.0 Log	0	0	0
UV 2.5 Log	998	490	632
WS Control 0.5 Log	0	0	0
Total Plants Selecting Technologies	2,893	1,852	2,255

[1] Some plants are projected to select more than one technology to meet LT2ESWTR bin requirements; consequently, the value for total plants does not equal the sum of all technologies selected. Source: Chapter 6 of the LT2ESWTR Economic Analysis (USEPA 2003a).

c. *Unfiltered systems treatment costs.* The proposed LT2ESWTR requires all unfiltered plants to achieve 2 logs of inactivation if their mean source water *Cryptosporidium* concentration is less than or equal to 0.01 oocysts/L and 3 logs of inactivation if it is greater than 0.01 oocysts/L. For most systems, UV appears to be the least expensive technology that can achieve the required log inactivation of *Cryptosporidium*, and it is expected to be widely used by unfiltered systems to meet the rule requirement. However, as with filtered systems, EPA estimated that a small percentage of plants would elect to install a technology more expensive than UV due to the configuration of existing equipment or other factors. Ozone is the next least expensive technology that will meet the inactivation requirements for some systems, and is estimated to be used by plants that do not use UV.

All unfiltered plants must meet requirements of the LT2ESWTR; therefore, the percent of plants adding technology is 100 percent. This also assumes that no unfiltered systems currently use these additional treatment technologies. For this cost analysis, the Agency assumed 100 percent of very small unfiltered systems will use UV; for all other unfiltered system sizes, the Agency estimated that 90 percent would install UV and 10 percent would add ozone. This analysis is discussed in more detail in the LT2ESWTR EA (USEPA 2003a). Treatment costs for unfiltered systems are included in Table VI–11.

TABLE VI–11.—TOTAL PRESENT VALUE AND ANNUALIZED PRESENT VALUE TREATMENT COSTS FOR FILTERED AND UNFILTERED PLANTS

Data Set	System Size (population served)	Present Value Capital Costs at 3% A	Present Value Capital Costs at 7% B	Annualized O&M Costs at 3% C	Annualized O&M Costs at 7% D	Total Annuallized Costs at 3% E	Total Annualized Costs at 7% F
ICR	≤10,000	$76.1	$56.0	$5.2	$4.3	$9.6	$9.1
	>10,000	1,092.4	868.0	26.1	22.7	88.8	97.1
TOTAL		1,168.5	924.0	31.3	26.9	98.4	106.2
ICRSSL	≤10,000	42.8	31.5	2.9	2.4	5.3	5.1
	>10,000	707.1	561.8	16.2	14.0	56.8	62.3
TOTAL		749.8	593.3	19.0	16.4	62.1	67.3
ICRSSM	≤10,000	52.6	38.7	3.5	2.9	6.6	6.2
	>10,000	842.4	669.3	19.4	16.9	67.8	74.3
TOTAL		894.9	708.0	23.0	19.8	74.4	80.6

Source: Chapter 6 of the LT2ESWTR Economic Analysis (USEPA 2003a)

d. *Uncovered finished water storage facilities.* As part of the LT2ESWTR, systems with uncovered finished water storage facilities have the option to cover the storage facility or provide disinfection after the storage facility, unless the State has determined that existing risk mitigation is adequate. Disinfection alternatives must achieve at least four logs of virus inactivation. To develop national cost estimates for systems to comply with this provision of the LT2ESWTR, unit costs for each treatment alternative and the percentage of systems selecting each alternative were estimated for the inventory of systems with uncovered finished water storage facilities. A full description of the unit costs and other assumptions used in this analysis is presented in Chapter 6 and Appendix I of the LT2ESWTR EA (USEPA 2003a).

The Agency assumed that all systems with uncovered finished water storage facilities will have to either install a cover or treat their discharge. This overestimates the cost of this provision because States can determine that systems with uncovered finished storage facilities do not need to take these additional measures. The technology selection for the uncovered finished water storage facilities was developed through a least-cost approach.

For systems with uncovered storage facility capacities of five million gallons (MG) or less, covering the storage facilities is the least expensive alternative. Although chlorination is the least expensive alternative for the remaining systems, the ability of a system to use booster chlorination depends on their current residual disinfectant type. Less than half of all surface water systems are predicted to use chloramination following implementation of the Stage 2 DBPR. Adding chlorine to water that has been treated with chloramines is not a feasible alternative; therefore, the fraction of systems projected to add booster chlorination to the effluent from the storage facility was estimated at 50 percent, with the remaining 50 percent estimated to add covers. The technology selection for uncovered finished water storage facilities is presented in Table VI–12.

TABLE VI–12.—ESTIMATED TECHNOLOGY SELECTION FOR UNCOVERED STORAGE FACILITIES

Size category (MG)	Number of uncovered storage facilities	Floating cover (%)	Booster chlorination (%)
0–0.1	25	100	
0.1–1	7	100	
>1–5	44	100	
>5–10	12	100	
>10–20	10	100	
>20–40	9	50	50
>40–60	4	50	50
>60–80	4	50	50
>80–100	6	50	50
>100–150	6	50	50
>150–200	2	50	50
>200–250	4	50	50
>250–1,000	4	50	50
>1,000	1	50	50

Source: Appendix I of the LT2ESWTR Economic Analysis (USEPA 2003a)

Table VI–13 summarizes total annualized present value costs for the uncovered storage facility provision using both three and seven percent discount rates. The Agency estimates the total annualized present value cost for covering or treating uncovered finished water storage facilities to be approximately $5.4 million at a three percent discount rate and $6.4 million at a seven percent discount rate.

TABLE VI–13.—ESTIMATED ANNUALIZED PRESENT VALUE COST FOR UNCOVERED FINISHED WATER STORAGE FACILITY PROVISION (2000$)

System size (population served)	Annualized cost at 3%			Annualized cost at 7%		
	Capital	O&M	Total	Capital	O&M	Total
≤10,000	$3,520	$1,649	$5,169	$4,713	$1,552	$6,264
>10,000	3,349,320	2,046,425	5,395,745	4,483,927	1,925,203	6,409,129
Total	3,352,840	2,048,074	5,400,915	4,488,639	1,926,754	6,415,393

Source: Appendix I of the LT2ESWTR Economic Analysis (USEPA 2003a)

e. *Future monitoring costs.* Six years after initial bin classification, filtered and unfiltered plants will be required to conduct a second round of monitoring to assess whether source water *Cryptosporidium* levels have changed significantly. EPA will evaluate new analytical methods and surrogate indicators of microbial water quality in the interim. While the costs of monitoring are likely to change in the six years following rule promulgation, it is difficult to predict how they will change. In the absence of any other information, it was assumed that the laboratory costs would be the same as for the initial monitoring.

All plants that conducted initial monitoring were assumed to conduct the second round of monitoring as well, except for those systems that installed treatment that reduces 2.5 logs of *Cryptosporidium* or greater as a result of the rule. These systems are exempt from monitoring under the LT2ESWTR. Table VI–8 shows the number of systems that are estimated to conduct the second round of monitoring (listed as ''future'' monitoring in the table). EPA estimates the cost of re-binning will range from $23 million to $38 million depending on the occurrence data set and discount rate used in the estimate (*see* Table VI–14). Costs differ among *Cryptosporidium* occurrence data sets due to differences in estimates of the number of plants that will add technologies to achieve at least 2.5 log *Cryptosporidium* reduction and the number of small plants that will be triggered into monitoring for *Cryptosporidium.* Appendix D of the EA provides further details (USEPA 2003a).

TABLE VI–14.—PRESENT VALUE OF MONITORING COSTS OF FUTURE RE-BINNING

[$millions, 2000$]

System size	ICR (3%)	ICR (7%)	ICRSSL (3%)	ICRSSL (7%)	ICRSSM (3%)	ICRSSM (7%)
	A	B	C	D	E	F
≤10K	$23.5	$14.3	$18.4	$11.3	$20.7	$12.6
>10k	14.4	9.8	16.4	11.2	15.6	10.7
Total	37.8	24.1	34.8	22.5	36.3	23.3

Source: Chapter 6 of the LT2ESWTR Economic Analysis (USEPA 2003a)

f. Sensitivity analysis—influent bromide levels on technology selection for filtered plants. One concern about the ICR data set was that it may not actually reflect influent bromide levels in some plants during droughts. High influent bromide levels (the precursor for bromate formation) limits ozone use because the plant would not be able to meet the MCL for bromate. The Agency conducted a sensitivity analysis to estimate an impact of higher influent bromide levels would have on technology decisions. The sensitivity analysis assumes influent bromide concentrations of 50 parts per billion (ppb) above the ICR concentrations. Overall, the impact of these assumptions have a minimal impact on costs. A complete discussion of this sensitivity analysis is located in LT2ESWTR EA (USEPA 2003a).

3. State/Primacy Agency Costs

The Agency estimates that States and primacy agencies will incur an annualized present value cost of $0.9 to $1.0 million using a three percent discount rate and $1.2 million at seven percent. State implementation activities include regulation adoption and program implementation, training State staff, training PWS staff, providing technical assistance to PWSs, and updating the management system. To estimate implementation costs to States/Primacy Agencies, the number of full-time employees (FTEs) per activity is multiplied by the number of labor hours per FTE, the cost per labor hour, and the number of States and Territories.

In addition to implementation costs, States and primacy agencies will also incur costs associated with monitoring data management. Because EPA will directly manage the first round of monitoring by large systems (serving at least 10,000 people), States are not predicted to incur costs for these activities. States will, however, incur costs associated with small system monitoring. This is a result of the delayed start of small system monitoring, which will mean that some States will assume primacy for small system monitoring. In addition, States will review of the second round of monitoring results. States will also incur costs in reviewing technology compliance data and consulting with systems regarding benchmarking for systems that change their disinfection procedures to comply with the rule. Appendix D of the LT2ESWTR EA provides more information about the State and primacy agency cost analysis (USEPA 2003a).

4. Non-Quantified Costs

EPA has quantified all the major costs for this rule and has provided uncertainty analyses to bound the over or underestimates in the costs. There are some costs that EPA has not quantified, however, because of lack of data. For example, some systems may merge with neighboring systems to comply with this rule. Such changes have both costs (legal fees and connecting infrastructure) and benefits (economies of scale). Likewise, systems would incur

costs for procuring a new source of water that may result in lower overall treatment costs.

In addition, the Agency was unable to predict the usage or estimate the costs of several toolbox options. These options include intake management and demonstrations of performance. They have not been included in the quantified analysis because data are not available to estimate the number of systems that may use these toolbox options to comply with the LT2ESWTR. Not including these generally low-cost options may result in overestimation of costs.

E. What Are the Household Costs of the Proposed Rule?

Another way to assess a rule's impact is to consider how it might impact residential water bills. This analysis considers the potential increase in a household's water bill if a CWS passed the entire cost increase resulting from this rule on to its customers. It is a tool to gauge potential impacts and should not be construed as precise estimates of potential changes to individual water bills.

Included in this analysis are all CWS costs, including rule implementation, initial and future monitoring for bin classification, additional *Cryptosporidium* treatment, and treating or covering uncovered finished water storage facilities. Costs for small systems *Cryptosporidium* monitoring, additional *Cryptosporidium* treatment, and uncovered finished water storage facilities are assigned only to the subset of systems expected to incur them. Although implementation and monitoring represent relatively small, one-time costs, they have been included in the analysis to provide a complete distribution of the potential household cost. A detailed description of the derivation of household costs is in section 6.10 and Appendix J of the LT2ESTWR EA (USEPA 2003a).

For purchased systems that are linked to larger nonpurchased systems, the households costs are calculated based on the unit costs of the larger system but included in the distribution from the size category of the purchased system. Households costs for these purchased systems are based on the household usage rates appropriate for the retail system and not the system selling the water. This approach for the purchased systems reflects the fact that although they will not face increased costs from adding their own treatment, whatever costs the wholesale utility incurs would likely be passed on as higher water costs.

Table VI–15 shows the results of the household cost analysis. In addition to mean and median estimates, the Agency calculated the 90th and 95th percentile. EPA estimates that all households served by surface and GWUDI sources will face some increase in household costs due to implementation of the LT2ESWTR (except for those few served by systems that have already installed 5.5 logs of treatment for *Cryptosporidium*). Of all the households subject to the rule, from 24 to 35 percent are projected to incur costs for adding treatment, depending on the *Cryptosporidium* occurrence data set used.

Approximately 95 percent of the households potentially subject to the rule are served by systems serving at least 10,000 people; these systems experience the lowest increases in costs due to significant economies of scale. Over 90 percent of all households will face an annual cost increase of less than $5. Households served by small systems that install advanced technologies will face the greatest increases in annual costs. EPA expects that the model's projections for these systems are, in some cases, overstated. Some systems are likely to find alternative treatment techniques such as other toolbox options not included in this analysis, or sources of water (ground water, purchased water, or consolidating with another system) that would be less costly than installing more expensive treatment techniques.

TABLE VI–15.—POTENTIAL ANNUAL HOUSEHOLD COSTS IMPACTS FOR THE PREFERRED REGULATORY OPTION (2000$)

System: type/size	Households	Mean	Median	90th Percentile	95th Percentile	Percent of systems with household cost increase < $12	Percent of systems with household cost increase < $120
All Systems—ICR							
All CWS	65,816,979	$1.68	$0.13	$4.06	$7.57	98.37	99.99
CWS ≤ 10,000	3,318,012	4.61	1.34	13.04	14.92	87.88	99.88
All Systems—ICRSSL							
All CWS	65,816,979	$1.07	$0.03	$3.24	$5.43	98.31	100.00
CWS ≤ 10,000	3,318,012	2.68	0.80	6.10	9.39	95.71	99.95
All Systems—ICRSSM							
All CWS	65,816,979	$1.28	$0.03	$3.48	$6.47	99.07	100.00
CWS ≤ 10,000	3,318,012	3.27	0.80	6.62	13.04	93.90	99.93

Source: Chapter 6 of the LT2ESWTR Economic Analysis (USEPA 2003a).

F. What Are the Incremental Costs and Benefits of the Proposed LT2ESWTR?

Incremental costs and benefits are those that are incurred or realized in reducing *Cryptosporidium* exposures from one alternative to the next. Estimates of incremental costs and benefits are useful in considering the economic efficiency of different regulatory options considered by the Agency. Generally, the goal of an incremental analysis is to identify the regulatory option where incremental benefits most closely equal incremental costs. However, the usefulness of this analysis is limited because many benefits from this rule are unquantified and not monetized. Incremental analyses should consider both quantified and non-quantified (where possible) benefits and costs.

Usually an incremental analysis implies increasing levels of stringency along a single parameter, with each alternative providing all the protection of the previous alternative, plus additional protection. However, the

regulatory alternatives in this rule vary by multiple parameters (*e.g,* risk bin boundaries, treatment requirements). The comparison between any two alternatives is, therefore, between two separate sets of benefits, in the sense that they may be distributed to somewhat different population groups.

The regulatory alternatives, however, do achieve increasing levels of benefits at increasing levels of costs. As a result, it is possible to display incremental net benefits from the baseline and alternative to alternative. Tables VI–16a and VI–16b show incremental costs, benefits, and net benefits for the four regulatory alternatives shown in Table VI–1, using the enhanced and traditional COI, respectively. All values are annualized present values expressed in Year 2000 dollars. The displayed values are the mean estimates for the different occurrence distributions.

With the enhanced COI, incremental costs are generally closest to incremental benefits for A2, a more stringent alternative than the Preferred Alternative, A3. For the traditional COI, incremental costs most closely equal incremental benefits for A3, the Preferred Alternative, under the majority of conditions evaluated.

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Table VI-16a.– Incremental Net Benefits by Rule Alternative—Enhanced COI
(Annualized Present Value, $millions, 2000$)

Data Set	Rule Alternative	Annual Costs	Annual Benefits	Incremental Costs[1]	Incremental Benefits	Incremental Net Benefits
		A	B	C	D	E=D-C
3 Percent Discount Rate						
ICR	A4	$ 58	$ 1,349	$ 58	$ 1,349	$ 1,290
	A3 - Preferred	$ 111	$ 1,445	$ 52	$ 96	$ 44
	A2	$ 134	$ 1,461	$ 23	$ 16	$ -8
	A1	$ 361	$ 1,482	$ 227	$ 21	$ -206
ICRSSL	A4	$ 37	$ 328	$ 37	$ 328	$ 291
	A3 - Preferred	$ 73	$ 374	$ 37	$ 46	$ 9
	A2	$ 100	$ 397	$ 26	$ 24	$ -2
	A1	$ 361	$ 457	$ 261	$ 59	$ -202
ICRSSM	A4	$ 44	$ 635	$ 44	$ 635	$ 592
	A3 - Preferred	$ 86	$ 715	$ 42	$ 80	$ 38
	A2	$ 113	$ 742	$ 26	$ 27	$ 1
	A1	$ 361	$ 796	$ 248	$ 53	$ -195
7 Percent Discount Rate						
ICR	A4	$ 65	$ 1,148	$ 65	$ 1,148	$ 1,083
	A3 - Preferred	$ 121	$ 1,230	$ 56	$ 82	$ 26
	A2	$ 145	$ 1,243	$ 25	$ 13	$ -11
	A1	$ 388	$ 1,260	$ 242	$ 18	$ -225
ICRSSL	A4	$ 41	$ 279	$ 41	$ 279	$ 238
	A3 - Preferred	$ 81	$ 318	$ 40	$ 39	$ -1
	A2	$ 108	$ 338	$ 27	$ 20	$ -7
	A1	$ 388	$ 389	$ 279	$ 50	$ -229
ICRSSM	A4	$ 48	$ 541	$ 48	$ 541	$ 493
	A3 - Preferred	$ 94	$ 609	$ 47	$ 68	$ 21
	A2	$ 122	$ 632	$ 28	$ 23	$ -5
	A1	$ 388	$ 677	$ 265	$ 45	$ -220

Table VI-16b.– Incremental Net Benefits by Rule Alternative—Traditional COI
(Annualized Present Value, $millions, 2000$)

Data Set	Rule Alternative	Annual Costs A	Annual Benefits B	Incremental Costs[1] C	Incremental Benefits D	Incremental Net Benefits E=D-C
3 Percent Discount Rate						
ICR	A4	$ 58	$ 907	$ 58	$ 907	$ 848
	A3 - Preferred	$ 111	$ 967	$ 52	$ 60	$ 8
	A2	$ 134	$ 977	$ 23	$ 10	$ -14
	A1	$ 361	$ 989	$ 227	$ 13	$ -214
ICRSSL	A4	$ 37	$ 225	$ 37	$ 225	$ 188
	A3 - Preferred	$ 73	$ 253	$ 37	$ 29	$ -8
	A2	$ 100	$ 268	$ 26	$ 15	$ -11
	A1	$ 361	$ 305	$ 261	$ 37	$ -225
ICRSSM	A4	$ 44	$ 432	$ 44	$ 432	$ 388
	A3 - Preferred	$ 86	$ 481	$ 42	$ 50	$ 7
	A2	$ 113	$ 498	$ 26	$ 17	$ -10
	A1	$ 361	$ 531	$ 248	$ 33	$ -215
7 Percent Discount Rate						
ICR	A4	$ 65	$ 775	$ 65	$ 775	$ 710
	A3 - Preferred	$ 121	$ 826	$ 56	$ 51	$ -5
	A2	$ 145	$ 834	$ 25	$ 8	$ -16
	A1	$ 388	$ 845	$ 242	$ 11	$ -231
ICRSSL	A4	$ 41	$ 192	$ 41	$ 192	$ 151
	A3 - Preferred	$ 81	$ 216	$ 40	$ 24	$ -16
	A2	$ 108	$ 229	$ 27	$ 12	$ -15
	A1	$ 388	$ 260	$ 279	$ 31	$ -248
ICRSSM	A4	$ 48	$ 369	$ 48	$ 369	$ 321
	A3 - Preferred	$ 94	$ 411	$ 47	$ 42	$ -4
	A2	$ 122	$ 425	$ 28	$ 14	$ -14
	A1	$ 388	$ 454	$ 265	$ 28	$ -237

[1]The traditional COI only includes valuation for medical costs and lost work time (including some portion of unpaid household production). The enhanced COI also factors in valuations for lost personal time (non-worktime) such as child care and homemaking (to the extent not covered by the traditional COI), time with family, and recreation, and lost productivity at work on days when workers are ill but go to work anyway. Source: Chapter 8 of the *LT2ESWTR Economic Analysis* (USEPA 2003a)

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G. Are There Benefits From the Reduction of Co-Occurring Contaminants?

This section presents information on the unquantified benefits that will accrue from removal of other contaminants, primarily pathogens, due to improved control of *Cryptosporidium*. While the benefits analysis for the LT2ESWTR only includes reductions in illness and mortality attributable to *Cryptosporidium*, the LT2ESWTR is expected to reduce exposure to other parasitic protozoans that EPA regulates, or is considering for future regulation. For example, it is expected that the LT2ESWTR will improve control of *Giardia lamblia*, Cyclospora sp. and members of the Microsporididea class, seven genera (10 species) of which have been recovered in humans (Mota *et al.*, 2000). In addition, greater *Cryptosporidium* control may improve control of the pathogenic bacteria and viruses. Chemical contaminants such as arsenic, DBPs and atrazine may also be controlled, in part, by control of *Cryptosporidium*, depending on the technologies selected.

Giardia lamblia and Cyclospora sp. are larger than *Cryptosporidium*, while Microsporididea, bacteria, and the viruses are smaller than *Cryptosporidium*. The expected removal of co-occurring microorganisms can often be predicted for those treatment unit processes whose removal efficiency

depends in part, or entirely, on the size of the organism. For example, a study by Goodrich and Lykins (1995) evaluating bag filters showed that any microbe or object greater than 4.5 microns in size (the average size of *Cryptosporidium*) would be subject to removal ranging from 0.5 to 2.0 logs.

Although not directly dependent on organism size, other treatment technologies identified in the LT2ESWTR should also provide additional control of co-occurring microbial pathogens. Membrane processes that remove *Cryptosporidium* are shown to achieve equivalent log removal of Giardia under worst-case and normal operating conditions (USEPA 2003c). Reduction in individual filter turbidities will reduce concentrations of other pathogens as well as *Cryptosporidium*. For example, in Dutch surface water, Giardia and *Cryptosporidium* occurrence appeared to correlate well with each other and for the Rhine River, with turbidity (Medema *et al.* 2001). Thus, improved control of *Cryptosporidium* should also result in improved control of *Giardia lamblia*.

Some membrane technologies that might be installed to comply with the LT2ESWTR can also reduce or eliminate chemical contaminants including arsenic, DBPs and atrazine. EPA has recently finalized a rule to further control arsenic levels in drinking water and is concurrently proposing the Stage 2 DBPR to address DBP control.

The extent to which the LT2ESWTR can reduce the overall risk from other contaminants has not been quantitatively evaluated because of the Agency's lack of data regarding the co-occurrence among *Cryptosporidium* and other microbial pathogens and contaminants. Because of the difficulties in establishing which systems would have multiple problems, such as microbial contamination, arsenic, and DBPs or any combination of the three, no estimate was made of the potential cost savings from addressing more than one contaminant simultaneously.

H. Are There Increased Risks From Other Contaminants?

It is unlikely that the LT2ESWTR will result in a significant increase in risk from other contaminants. Many of the options that systems will select to comply with the LT2ESWTR, such as UV, improved filtration performance, and watershed control, do not form DBPs. Other technologies that are effective against *Cryptosporidium*, such as ozone and chlorine dioxide, do form DBPs. However, these DBPs are currently regulated under the Stage 1 DBPR, and systems will have to comply with these regulations when implementing technologies to meet the LT2ESWTR.

I. What Are The Effects of the Contaminant on the General Population and Groups Within the General Populations That Are Identified as Likely To Be at Greater Risk of Adverse Health Effects?

Section II of this preamble discusses the health effects associated with *Cryptosporidium* on the general population as well as the effects on other sensitive sub-populations. In addition, health effects associated with children and pregnant women are discussed in greater detail in section VII.G of this preamble.

J. What Are the Uncertainties in the Baseline, Risk, Benefit, and Cost Estimates for the Proposed LT2ESWTR as Well as the Quality and Extent of the Information?

Today's proposal models the current baseline risk from *Cryptosporidium* exposure, as well as the reduction in risk and the cost for various rule options. There is uncertainty in the risk calculation, the benefit estimate, the cost estimates, and the interaction of other upcoming rules. Section IV of the proposed rule considers the uncertainty with the risk estimates; however, a brief summary of the major risk uncertainties as they relate to benefit estimation is provided next. In addition, the LT2ESWTR EA has a more extensive discussion of all of the uncertainties (USEPA 2003a).

In addition, the Agency conducted sensitivity analyses to address uncertainty. The sensitivity analyses focus on various occurrence, benefit and cost factors that may have a significant effect on the estimated impacts of the rule. All of these sensitivity analyses are explained in more detail in the EA for the LT2ESWTR (USEPA 2003a).

One area of uncertainty is associated with the estimate of *Cryptosporidium* occurrence on a national basis. The Information Collection Rule plant-mean data were higher than the ICRSS medium or large system plant-mean data at the 90th percentile. The reasons for these differing results are not well understood but may stem from differences in the populations sampled, year-to-year variation in occurrence, and systematic differences in the sampling and measurement methods employed. These data suggest that *Cryptosporidium* levels are relatively low in most water sources, but there is a subset of sources with significantly higher concentrations. Additional uncertainty is associated with estimating finished water occurrence because the analysis is based on assumptions about treatment plant performance. To account for these uncertainties, the Agency used Monte Carlo simulation models that allow substantial variation in each estimate and computed finished water occurrence values based on statistical sampling of the variable estimates.

The risk associated with finished water occurrence is of lesser uncertainty than is typical for many contaminants because the health effects are measured based on *Cryptosporidium* challenge studies to human volunteer populations. Nevertheless, there is significant uncertainty about the dose-response associated with *Cryptosporidium* because there exists considerable differences in infectivity among the various tested *Cryptosporidium parvum* isolates. As described in section III.B, the Agency accounted for these differences using Monte Carlo simulations that randomly sampled from infectivity distributions for the three tested isolates. The different simulations were designed to account for the limited number of challenge studies and the variability in the infectivity of the isolates themselves. In addition, because the *Cryptosporidium* dosing levels in the human feeding studies were above typical drinking water exposure levels (*e.g.*, one oocyst), there remains significant uncertainty that could not be quantified into the analysis.

While all of the significant costs of today's proposed rule have been identified by EPA, there are uncertainties about some of the estimates. However, the Agency explored the impact of the uncertainties that might have the greatest impact by conducting sensitivity analyses and using Monte Carlo techniques. For example, section VI.D.2.f of today's rule explores the impact of influent bromide levels on technology selection. As shown in the EA for this rule, the impact of higher influent bromide levels will not have a significant impact on the rule's costs. In addition, subsection 6.12 of the EA summarizes other cost uncertainties including the Agency's inability to include some lower cost toolbox options in the cost analysis (USEPA 2003a).

Last, EPA has recently finalized new regulations for arsenic, radon, *Cryptosporidium* in small surface water systems, and filter backwash in all system sizes (LT1ESWTR and Filter Backwash Rule); proposed a rule for microbials in ground water systems (Ground Water Rule); and is

concurrently proposing additional control of disinfection byproducts (Stage 2 Disinfection Byproducts Rule). These rules may have overlapping impacts on some drinking water systems but the extent is not possible to estimate because of lack of information on co-occurrence. However, it is possible for a system to choose treatment technologies that would address multiple contaminants. Therefore, while the total cost impact of these drinking water rules is uncertain, it is most likely less than the estimated total cost of all individual rules combined.

K. What is the Benefit/Cost Determination for the Proposed LT2ESWTR?

The Agency has determined that the benefits of the proposed LT2ESWTR justify the costs. As discussed in section VI.C, the proposed rule provides a large reduction in endemic cryptosporidiosis illness and mortalities. More stringent alternatives provide greater reductions but at higher costs. Alternative A1 provides the greatest overall reduction in illnesses and mortalities but the incremental benefits between this option and the preferred option are relatively small while the incremental costs are significant. In addition, the preferred regulatory option, unlike option A1, specifically targets those systems whose source water requires higher levels of treatment.

Tables VI–17a and VI–17b present net benefits for the four regulatory alternatives that were evaluated. Generally, analysis of net benefits is used to identify alternatives where benefits exceed costs, as well as the alternative that maximizes net benefits. However, as with the analysis of incremental net benefits discussed previously, the usefulness of this analysis in evaluating regulatory alternatives for the LT2ESWTR is limited because many benefits from this rule are un-quantified and non-monetized. Analyses of net benefits should consider both quantified and non-quantified (where possible) benefits and costs.

Also, as noted earlier, the regulatory alternatives considered for the LT2ESWTR vary both in the population that experiences benefits and costs (*i.e.*, risk bin boundaries) and the magnitude of the benefits and costs (*i.e.*, treatment requirements). Consequently, the more stringent regulatory alternatives provide benefits to population groups that do not experience any benefit under less stringent alternatives.

As shown by Tables VI–17a and VI–17b, net benefits are positive for all four regulatory alternatives evaluated. With the enhanced COI (Table VI–17a), net benefits are highest for the Preferred Alternative, A3, under the majority of occurrence distributions and discount rates evaluated. When the traditional COI (Table VI–17b) is used, the Preferred Alternative has the highest net benefits at a three percent discount rate for the two of the occurrence distributions, the Information Collection Rule and ICRSSM, while the least stringent alternative, A4, is highest for the ICRSSL. At a seven percent discount rate, A4 maximizes net benefits under all occurrence distributions.

Table VI–17a.— Mean Net Benefits by Rule Option—Enhanced COI ($millions, 2000$)

Data Set	Rule Alternative	Annualized Value	
		3%, 25 Years	7%, 25 Years
ICR	A1	$ 1,121	$ 873
	A2	$ 1,327	$ 1,098
	A3 - Preferred	$ 1,335	$ 1,109
	A4	$ 1,290	$ 1,083
ICRSSL	A1	$ 96	$ 1
	A2	$ 298	$ 230
	A3 - Preferred	$ 300	$ 237
	A4	$ 291	$ 238
ICRSSM	A1	$ 435	$ 289
	A2	$ 630	$ 509
	A3 - Preferred	$ 629	$ 514
	A4	$ 592	$ 493

Table VI-17b.-- Mean Net Benefits by Rule Option—Traditional COI ($millions, 2000$)

Data Set	Rule Alternative	Annualized Value	
		3%, 25 Years	7%, 25 Years
ICR	A1	$ 628	$ 457
	A2	$ 843	$ 688
	A3 - Preferred	$ 856	$ 705
	A4	$ 848	$ 710
ICRSSL	A1	$ -56	$ -128
	A2	$ 168	$ 120
	A3 - Preferred	$ 180	$ 135
	A4	$ 188	$ 151
ICRSSM	A1	$ 170	$ 66
	A2	$ 386	$ 303
	A3 - Preferred	$ 395	$ 317
	A4	$ 388	$ 321

[1]The traditional COI only includes valuation for medical costs and lost work time (including some portion of unpaid household production). The enhanced COI also factors in valuations for lost personal time (non-worktime) such as child care and homemaking (to the extent not covered by the traditional COI), time with family, and recreation, and lost productivity at work on days when workers are ill but go to work anyway. Source: Chapter 8 of the *LT2ESWTR Economic Analysis* (USEPA 2003a)

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In addition to the net benefits of the proposed LT2ESWTR, the Agency used several other techniques to compare costs and benefits. For example, EPA calculated the cost of the rule per case avoided. Table VI–18 shows both the cost of the rule per illness avoided and cost of the rule per death avoided. This cost effectiveness measure is another way of examining the benefits and costs of the rule but should not be used to

compare alternatives because an alternative with the lowest cost per illness/death avoided may not result in the highest net benefits. With the exception of alternative A1, the rule options look favorable from a cost effectiveness analysis when you compare them to both the average cost of cryptosporidiosis illness ($745 and $245 for the two COI approaches) and the mean value of a death avoided—approximately $7 million dollars. Additional information about this analysis and other methods of comparing benefits and costs can be found in chapter 8 to the LT2ESWTR EA (USEPA 2003a).

TABLE VI–18.—COST PER ILLNESS OR DEATH AVOIDED

Data set	Rule alternative	Cost per illness avoided ($)		Cost per death avoided ($ millions, 2000$)	
		3%	7%	3%	7%
ICR	A1	339	244	2.5	1.8
	A2	128	93	0.9	0.7
	A3—Preferred	107	78	0.8	0.6
	A4	62	45	0.4	0.3
ICRSSL	A1	1,098	789	8.0	5.7
	A2	356	259	2.5	1.8
	A3—Preferred	282	208	1.9	1.4
	A4	165	122	1.1	0.8
ICRSSM	A1	631	453	4.6	3.3
	A2	213	155	1.6	1.1
	A3—Preferred	170	125	1.2	0.9
	A4	99	73	0.7	0.5

Source: Chapter 8 of the LT2ESWTR Economic Analysis (USEPA 2003a)

L. Request for Comment

The Agency requests comment on all aspects of the proposed rule's economic impact analysis. Specifically, EPA seeks input into the following issues:

- Both of the methodologies for valuing non-fatal cryptosporidiosis and the use of a real income growth factor to adjust these estimates for the years 2008 through 2027;
- How can the Agency fully incorporate all toolbox options into the economic analysis?
- How can the Agency estimate the potential benefits from reduced epidemic outbreaks of cryptosporidiosis?

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. 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 EPA ICR number 2097.01.

The information collected as a result of this rule will allow the States and EPA to determine appropriate requirements for specific systems, and to evaluate compliance with the rule. For the first 3 years after LT2ESWTR promulgation, the major information requirements concern monitoring activities and compliance tracking. The information collection requirements are mandatory (part 141), and the information collected is not confidential.

The estimate of annual average burden hours for the LT2ESWTR during the first three years following promulgation is 145,854 hours. The annual average cost estimate is $3.9 million for labor and $9.8 million per year for operation and maintenance including lab costs (which is a purchase of service). The burden hours per response is 1.47 hours and the cost per response is $138.12. The frequency of response (average responses per respondent) is 39, annually. The estimated number of likely respondents is 2,560 (the product of burden hours per response, frequency, and respondents does not total the annual average burden hours due to rounding). Note that the burden hour estimates for the first 3-year cycle include large system but not small system monitoring. Conversely, burden estimate for the second 3-year cycle will include small system monitoring but not large system, which will have been completed by then.

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 in 40 CFR are listed in 40 CFR part 9.

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 rule, which includes this ICR, under Docket ID No. OW–2002–0039. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 11, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by September 10, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or 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.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. secs. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Council for Advocacy.

For purposes of assessing the impacts of today's proposed rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register**, (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition is applied to this proposed regulation.

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. We have determined that 274 small systems, which are 2.32% of the 11,820 small systems regulated by the LT2ESWTR, will experience an impact of one percent or greater of average annual revenues; further, 31 systems, which are 0.26% of the systems regulated by this rule, will experience an impact of three percent or greater of average annual revenues (*see* Table VII–1).

TABLE VII–1.—ANNUALIZED COMPLIANCE COST AS A PERCENTAGE OF REVENUES FOR SMALL ENTITIES ($2000)

Entity by system size	Number of small systems (Percent)		Average annual estimated revenuses per system ($)	Systems experiencing costs of >% their revenues		Systems experiencing costs of >% of their revenues	
				Percent of sustem	Number of systems	Percent of systems	Number of systems
	A		B	E	F=A*E	G	H=A*G
Small Governments	5,910	50	2,434,200	2.4	140	0.3	15
Small Businesses	4,846	41	2,391,978	2.4	115	0.3	13
Small Organizations	1,064	9	4,446,165	1.2	13	0.1	1
All Small Entities	11,820	100	2,597,966	2.3	274	0.3	31

Note: Detail may not add due to independent rounding. Data are based on the means of the highest modeled distributions using Information Collection Rule occurrence data set. Costs are discounted at 3 percent, summed to present value, and annualized over 25 years. Source: Chapter 7 of the LT2ESWTR EA (USEPA 2003a).

The LT2ESWTR contains provisions that will affect systems serving fewer than 10,000 people that use surface water or GWUDI as a source. In order to meet the LT2ESWTR requirements, approximately 1,382 to 2,127 small systems would need to make capital improvements. Impacts on small entities are described in more detail in Chapters 6 and 7 of the Economic Analysis for the LT2ESWTR (USEPA 2003a). Table VII–2 shows the annual compliance costs of the LT2ESWTR on the small entities by system size and type based on a three percent discount rate (other estimates based on different data sets and discount rates produce lower costs). EPA has determined that in each size category, fewer than 20% of systems and fewer than 1000 systems will experience an impact of one percent or greater of average annual revenues (USEPA 2003a).

TABLE VII–2.—ANNUAL COMPLIANCE COSTS FOR THE PROPOSED LT2ESWTR BY SYSTEM SIZE AND TYPE

[$Millions, 2000$]

System type	System size (population served)					Total
	<100	101–500	501–1,000	1,001–3,300	3,301–10,000	
Public owned	$0.46	$0.88	$0.94	$2.62	$5.57	$10.37
Privately owned	1.00	0.71	0.22	0.31	0.36	2.60
All systems	1.45	1.59	1.07	2.92	5.93	12.97

Note: Results are based on the mean of the Information Collection Rule *Cryptosporidium* occurrence distribution. Costs are annualized at a three percent discount rate.

Source: Appendix D and Q of the LT2ESWTR EA (USEPA 2003a).

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. The LT2ESWTR contains a number of provisions to minimize the impact of the rule on systems generally, and on small systems in particular. The risk-targeted approach of the LT2ESWTR will impose additional treatment requirements only on the subset of systems with the highest vulnerability to *Cryptosporidium*, as indicated by source water pathogen levels. This approach will spare the majority of systems from the cost of installing additional treatment. Also, development of the microbial toolbox under the LT2ESWTR will provide both large and small systems with broad flexibility in selecting cost-effective compliance options to meet additional treatment requirements.

Small systems will monitor for *E. coli* as a screening analysis for source waters with low levels of fecal contamination. *Cryptosporidium* monitoring will only be required of small systems if they exceed the *E. coli* trigger value. Because *E. coli* analysis is much cheaper than *Cryptosporidium* analysis, the use of *E. coli* as a screen will significantly reduce monitoring costs for the majority of small systems. In order to allow EPA to review *Cryptosporidium* indicator relationships in large system monitoring data, small systems will not be required to initiate their monitoring until large system monitoring has been completed. This will provide small systems with additional time to become familiar with the rule and to prepare for monitoring and other compliance activities.

Funding would be available from programs administered by EPA and other Federal agencies to assist small public water systems (PWSs) in complying with the LT2ESWTR. The Drinking Water State Revolving Fund (DWSRF) assists PWSs with financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements. Through the DWSRF, EPA awards capitalization grants to States, which in turn can provide low-cost loans and other types of assistance to eligible PWSs. Loans made under the program can have interest rates between 0 percent and market rate and repayment terms of up to 20 years. States prioritize funding based on projects that address the most serious risks to human health and assist systems most in need. Congress provided $1.275 billion for the DWSRF program in fiscal year 1997, and has provided an additional $3.145 billion for the DWSRF program for fiscal years 1998 through 2001.

The DWSRF places an emphasis on small and disadvantaged communities. States must provide a minimum of 15% of the available funds for loans to small communities. A State has the option of providing up to 30% of the grant awarded to the State to furnish additional assistance to State-defined disadvantaged communities. This assistance can take the form of lower interest rates, principal forgiveness, or negative interest rate loans. The State may also extend repayment terms of loans for disadvantaged communities to up to 30 years. A State can set aside up to 2% of the grant to provide technical assistance to systems serving communities with populations fewer than 10,000.

In addition to the DWSRF, money is available from the Department of Agriculture's Rural Utility Service (RUS) and Housing and Urban Development's Community Development Block Grant (CDBG) program. RUS provides loans, guaranteed loans, and grants to improve, repair, or construct water supply and distribution systems in rural areas and towns of up to 10,000 people. In fiscal year 2002, RUS had over $1.5 billion of available funds for water and environmental programs. The CDBG program includes direct grants to States, which in turn are awarded to smaller communities, rural areas, and colon as in Arizona, California, New Mexico, and Texas and direct grants to U.S. territories and trusts. The CDBG budget for fiscal year 2002 totaled over $4.3 billion.

Although not required by the RFA to convene a Small Business Advocacy Review (SBAR) Panel because EPA determined that this proposal would not have a significant economic impact on a substantial number of small entities, EPA did convene a panel to obtain advice and recommendations from representatives of the small entities potentially subject to this rule's requirements.

Before convening the SBAR Panel, EPA consulted with a group of 24 small entity stakeholders likely to be impacted by the LT2ESWTR and who were asked to serve as Small Entity Representatives (SERs) after the Panel was convened. The small entity stakeholders included small system operators, local government representatives, and representatives of small nonprofit organizations. The small entity stakeholders were provided with background information on SDWA and potential alternatives for the LT2ESWTR in preparation for teleconferences on January 28, 2000, February 25, 2000, and April 7, 2000. This information package included data on preliminary unit costs for treatment enhancements under consideration.

During these three conference calls, the information that had been provided to the small entity stakeholders was discussed and EPA responded to questions and recorded initial comments. Following the three calls, the small entity stakeholders were asked to provide input on the potential impacts of the rule from their perspective. Seven small entity stakeholders provided written comments on these materials.

The SBAR Panel convened on April 25, 2000. The small entity stakeholders comments were provided to the SBAR Panel when it convened. After a teleconference between the SERs and the SBAR Panel on May 25, 2000, the SERs were invited to provide additional

comments on the information provided. Seven SERs provided additional comments on the rule components.

The SBAR Panel's report, Final Report of the Small Business Advocacy Review Panel on Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBPR) and Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) (USEPA 2000f), the SERs comments on the LT2ESWTR, and the background information provided to the SBAR Panel and the SERs are available for review in the docket for today's proposal (*http://www.epa.gov.edocket/*).

In general, the SERs who were consulted on the LT2ESWTR were concerned about the impact of these proposed rules on small water systems, the ability of small systems to acquire the technical and financial capability to implement requirements while maintaining flexibility to tailor the requirements to their needs, and the limitations of small systems. The SBAR Panel evaluated information and small-entity comments on issues related to the impact of the LT2ESWTR.

The LT2ESWTR takes into consideration the recordkeeping and reporting concerns identified by the SBAR Panel and the SERs. The SBAR Panel recommended that EPA evaluate ways to minimize the recordkeeping and reporting burdens under the rule by ensuring that the States have appropriate capacity for rule implementation, and that EPA provide as much monitoring flexibility as possible to small systems. EPA believes that the continuity with the IESWTR and LT1ESWTR was maintained to the extent possible to ease the transition to the LT2ESWTR, especially for small systems. The LT2ESWTR builds on the protection afforded under the IESWTR and LT1ESWTR, while minimizing the impact on small systems by using a risk-targeted approach (*i.e.*, source water monitoring) to identify systems that are still at risk from *Cryptosporidium* exposure.

The SBAR Panel noted the concern of several SERs that flexibility be provided in the compliance schedule of the rule. SERs commented on the technical and financial limitations of some small systems, the significant learning curve for operators with limited experience, and the need to continue providing uninterrupted service as reasons why additional compliance time may be needed for small systems. The SBAR Panel encouraged EPA to keep these limitations in mind in developing the proposed rule and provide as much compliance flexibility to small systems as is allowable under SDWA.

EPA has concluded that the proposed schedule for the LT2ESWTR provides sufficient time for small systems to achieve compliance. The schedule for small system monitoring and compliance with additional treatment requirements lags behind the schedule for large systems. The basis for the lagging schedule for small systems is that it allows EPA to confirm or refine the *E. coli* screening criteria that small systems will use to reduce monitoring costs. However, the lagging schedule also provides greater time for small systems to become knowledgeable about the LT2ESWTR, including the new monitoring requirements, and to become familiar with innovative technologies, like UV, that may be used by some small systems to meet additional treatment requirements.

Some SERs emphasized that EPA needs to maintain an appropriate balance between control of known microbial risks through adequate disinfection and for the more uncertain risks that may be associated with DBPs. The SBAR Panel did not foresee any potential conflict between rules regulating control of microbial contaminants and those regulating DBPs. EPA also believes that today's proposal and the accompanying proposed Stage 2 DBPR achieve an appropriate balance between microbial and DBP risks. The profiling and benchmarking requirements described in section IV.D of this preamble will ensure that systems maintain protection against pathogens as they make treatment changes to control the formation of DBPs.

The SBAR Panel considered a wide range of options and regulatory alternatives for providing small businesses with flexibility in complying with the LT2ESWTR. The SBAR Panel was concerned with the option of an across-the-board additional *Cryptosporidium* inactivation requirement because of the potential high cost to small systems and the uncertainty regarding the extent to which implementation of the LT1ESWTR will adequately address *Cryptosporidium* contamination at small systems. The SBAR Panel noted that, at the time, the Stage 2 M–DBP Federal Advisory Committee was exploring a targeted approach to *Cryptosporidium* control based on limited monitoring and system assessment, which would identify a subset of vulnerable systems to provide additional treatment in the range of 0.5-to 2.5-log reduction. Further, this approach would allow *E. coli* monitoring in lieu of *Cryptosporidium* monitoring as a screening device for small systems. The SBAR Panel was also encouraged by recent developments suggesting that UV is a viable, cost-effective means of fulfilling any additional inactivation requirements.

The SBAR Panel recommended that, in developing any additional inactivation requirements based on a targeted approach, EPA carefully consider the potential impacts on small systems and attempt to structure the regulatory requirements in a way that would minimize burden on this group. The SBAR Panel supported *E. coli* as an indicator parameter if additional monitoring is required. The SBAR Panel further recommended that, among the options EPA analyzes, the Agency also evaluate the option of not imposing any additional *Cryptosporidium* control requirements on small systems at this time, as it considers various options to address microbial concerns. Under this option, EPA would evaluate the effects of LT1ESWTR, once implemented, and then consider whether to impose additional requirements during its next 6-year review of the standard, as required by SDWA.

EPA considered these recommendations and has concluded that available information on the health risk associated with *Cryptosporidium* in drinking water warrant moving forward with today's proposal to address higher risk systems. In developing the proposed LT2ESWTR, EPA has implemented the Advisory Committee's recommendations to minimize burden on small systems. Specifically, the risk-targeted treatment requirements will substantially reduce overall costs for small systems in comparison to requiring additional treatment by all systems, and the use of *E. coli* screening will allow most small systems to avoid the cost of *Cryptosporidium* monitoring. Consequently, the Agency has concluded that today's proposal achieves an appropriate balance between public health protection and limiting the economic burden imposed on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

1. Summary of UMRA Requirements

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA,

EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Written Statement for Rules With Federal Mandates of $100 Million or More

EPA has determined that this rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized in this section. Table VII–3 illustrates the annualized public and private costs for the LT2ESWTR.

TABLE VII–3.—PUBLIC AND PRIVATE COSTS OF THE PROPOSED LT2ESWTR

	Range of annualized costs (Million $, 2000$)		Percent of total cost
	3% Discount rate	7% Discount rate	
PWS Costs	$45.7–69.0	$50.2–75.2	62.2–62.4
State Costs	0.9–1.0	1.2–1.2	1.3–0.9
Tribal Costs	0.1–0.2	0.1–0.2	0.1–0.1
Total Public Costs	46.7–70.1	51.5–76.6	63.6–63.4
Total Private Costs	26.8–40.4	29.4–44.1	36.4–36.6
Total Costs	73.5–110.5	80.9–120.7	100.0–100.0

Note: The ranges represent the ICRSSL (lowest) and Information Collection Rule (highest) modeled *Cryptosporidium* occurrence distributions. Detail may not add due to independent rounding.
Source: The LT2ESWTR Economic Analysis (USEPA 2003a).

A more detailed description of this analysis is presented in Economic Analysis for the LT2ESWTR (USEPA 2003a).

a. *Authorizing legislation.* As noted in section II, today's proposed rule is promulgated pursuant to section 1412 (b)(1)(A) of the Safe Drinking Water Act (SDWA), as amended in 1996, which directs EPA to promulgate a national primary drinking water regulation for a contaminant if EPA determines that the contaminant may have an adverse effect on the health of persons, occurs in public water systems with a frequency and at levels of public health concern, and regulation presents a meaningful opportunity for health risk reduction.

b. *Cost-benefit analysis.* Section VI of this preamble discusses the cost and benefits associated with the LT2ESWTR. Details are presented in the Economic Analysis for the LT2ESTWR (USEPA 2003a). For the LT2ESWTR proposal, EPA quantified costs and benefits for four regulatory alternatives. The four alternatives are described in section VI. Table VII–4 summarizes the range of annual costs and benefits for each alternative.

TABLE VII–4.—ANNUAL BENEFITS AND COSTS OF RULE ALTERNATIVES

[$Million]

Regulatory Alternative	Enhanced COI range of annualized benefits (3%)	Traditional COI range of annualized benefits (3%)	Enahnced COI range of annualized benefits (7%)	Tradition COI range of annualized benefits (7%)	Range of annualized costs (3%)	Range of annualized costs (7%)
Alternative A1	$457–1,492	$305–989	$389–1,260	$260–845	$361	$388
Alternative A2	397–1,461	268–977	338–1,243	229–834	100–134	108–145
Alternative A3 (Preferred Alternative)	374–1,445	253–967	318–1,230	216–826	73–111	81–121
Alternative A4	328–1,349	225–907	279–1,148	192–775	37–59	41–65

Source: The LT2ESWTR Economic Analysis (USEPA 2003a).

c. *Estimates of future compliance costs and disproportionate budgetary effects.* To meet the UMRA requirement in section 202, EPA analyzed future compliance costs and possible disproportionate budgetary effects. The Agency believes that the cost estimates, indicated earlier and discussed in more detail in section VI of this preamble,

accurately characterize future compliance costs of the proposed rule.

In analyzing disproportionate impacts, the Agency considered the impact on (1) different regions of the United States, (2) State, local, and Tribal governments, (3) urban, rural and other types of communities, and (4) any segment of the private sector. This analysis is presented in section 7 of Economic Analysis for the LT2ESWTR (USEPA 2003a).

EPA has concluded that the LT2ESWTR will not cause a disproportionate budgetary effect. This rule imposes the same requirements on systems nationally and does not disproportionately affect any segment. This rule will treat similarly situated systems (in terms of size, water quality, available data, installed technology, and presence of uncovered finished storage facilities) in similar (proportionate) ways, without regard to geographic location, type of community, or segment of industry. The LT2ESWTR is a rule where requirements are proportionate to risk. Although some groups may have differing budgetary effects as a result of LT2ESWTR, those costs are proportional to the need for greater information (monitoring) and risk posed (degree of treatment required). The variation in cost between large and small systems is due to economies of scale (a larger system can distribute cost across more customers). Regions will have varying impacts due to the number of affected systems.

d. *Macro-economic effects.* Under UMRA section 202, EPA is required to estimate the potential macro-economic effects of the regulation. These types of effects include those on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness. Macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP). In 2000, real GDP was $9,224 billion, so a rule would have to cost at least $23 billion to have a measurable effect. A regulation with a smaller aggregate effect is unlikely to have any measurable impact unless it is highly focused on a particular geographic region or economic sector.

The macro-economic effects on the national economy from the LT2ESWTR should not have a measurable effect because the total annual costs for the proposed option range from $73 million to $111 million based on median *Cryptosporidium* occurrence distributions from the ICRSSL and Information Collection Rule data sets and a discount rate of 3 percent ($81 to $121 million at a 7 percent discount rate). These annualized figures will remain constant over the 25-year implementation period that was evaluated, while GDP will probably continue to rise. Thus, LT2ESWTR costs measures as a percentage of the national GDP will only decline over time. Costs will not be highly focused on a particular geographic region or sector.

e. *Summary of EPA consultation with State, local, and Tribal governments and their concerns.* Consistent with the intergovernmental consultation provisions of section 204 of UMRA, EPA has already initiated consultations with the governmental entities affected by this rule. A variety of stakeholders, including small governments, were provided the opportunity for timely and meaningful participation in the regulatory development process. EPA used these opportunities to notify potentially affected governments of regulatory requirements being considered.

The Stage 2 M–DBP Federal Advisory Committee included representatives from State government (Association of State Drinking Water Administrators, Environmental Commissioners of States), local government (National League of Cities), and Tribes (All Indian Pueblo Council (AIPC)). Government and Tribal representatives on the Advisory Committee were generally concerned with ensuring that drinking water regulations are adequately protective of public health and that any additional public health expenditures due to new regulations achieve significant risk reduction. The proposed LT2ESWTR reflects the consensus recommendations of the Advisory Committee, as stated in the Agreement in Principle (65 FR 83015, December 29, 2000). Consequently, EPA believes that the risk-targeted approach for additional *Cryptosporidium* treatment requirements and other provisions in today's proposal satisfies the concerns of the government and Tribal representatives on the Advisory Committee.

As described in section VII.C of this preamble, the Agency convened a Small Business Advocacy Review (SBAR) Panel in accordance with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act to address the concerns of small entities, including small local governments specifically. Small entity representatives (SERs) to the SBAR panel, including representatives of small local governments, were concerned about the cost of the rule, the technical capability of small systems to implement requirements, and flexibility in regulatory requirements and in the compliance schedule. SERs also emphasized that EPA needs to balance the control of known microbial risks with the risks associated with DBPs.

Today's proposal is responsive to these concerns, as stated in section VII.C. The LT2ESWTR will impose costs for additional treatment on only the fraction of systems identified through monitoring as being at higher risk, and overall monitoring costs for small systems will be greatly reduced through use of the *E. coli* screening to waive small systems from *Cryptosporidium* monitoring. The microbial toolbox of treatment options will provide significant flexibility to systems to identify cost-effective solutions for meeting additional *Cryptosporidium* treatment requirements. The compliance schedule for small systems is delayed in relation to large systems, which will allow small systems additional time to become knowledgeable about and prepare to implement the LT2ESWTR. The intent of the proposed disinfection profiling provisions is to ensure that when systems make treatment changes to control DBP formation, they maintain protection against pathogens.

EPA held a meeting on the LT2ESWTR in February 2001 with representatives of State and local governments. Representatives of the following organizations attended: Association of State Drinking Water Administrators (ASDWA), the National Governors' Association (NGA), the National Conference of State Legislatures (NCSL), the International City/County Management Association (ICMA), the National League of Cities (NLC), the County Executives of America, and health departments. Representatives asked questions regarding how *Cryptosporidium* gets into the water, whether EPA would add laboratory approval for *Cryptosporidium* to State certification programs, the effectiveness of ozone and UV, and the development of ambient water quality criteria for *Cryptosporidium*.

EPA has largely addressed these questions in this preamble. Section II characterizes sources of *Cryptosporidium*. As described in section IV.K, EPA is currently carrying out a laboratory approval program for *Cryptosporidium* analyses but expects that this will be included in State laboratory certification programs in the future. In section IV.C., EPA describes the effectiveness of ozone and UV for *Cryptosporidium* inactivation and provides criteria for how these technologies may be used to comply with the treatment requirements in

today's proposal. The Agency is currently exploring the development of ambient water quality criteria for *Cryptosporidium*, but such criteria are not available at this time and are not included in today's proposal.

In addition to the Tribal representative on the Advisory Committee, EPA conducted outreach and consultation with Tribal representatives on a number of occasions regarding the LT2ESWTR. EPA presented the LT2ESWTR at the following forums: the 16th Annual Consumer Conference of the National Indian Health Board, which included over 900 representatives of Tribes across the nation; the annual conference of the National Tribal Environmental Council, at which over 100 Tribes were represented; and the 1999 EPA/Inter-Tribal Council of Arizona, which included representatives from 15 Tribes. EPA also sent the presentation materials used in the first two meetings and meeting summaries to over 500 Tribes and Tribal organizations.

Fact sheets describing the requirements of the LT2ESWTR and requesting Tribal input were distributed at an annual EPA Tribal meeting in San Francisco and at a Native American Water Works Association meeting in Scottsdale, Arizona. EPA also worked through its Regional Indian Coordinators and the National Tribal Operations Committee to raise awareness of the development of the proposed rule. EPA mailed all Federal Tribes LT2ESWTR fact sheets in November 2000. The Tribal representative to the Advisory Committee also presented the Stage 2 Agreement in Principle prior to signature in at least one political forum for various Tribes not affiliated with AIPC.

EPA held a teleconference in January 2002 with 12 Tribal representatives and four Regional Tribal Program Coordinators. Prior to the teleconference, EPA sent invitations to all Federal Tribes, along with a fact sheet explaining the LT2ESWTR.

Through this consultation, Tribal representatives expressed concern about implementing new regulations without additional funding sources. However, they also stated that the LT2ESWTR would have a benefit, and asserted that people served by small systems should receive equivalent public health protection. Questions were asked regarding the impact of the rule (*e.g.*, number of Tribal surface water systems) and the date for finalizing the rule. The Tribal representative to the M–DBP Advisory Committee advocated that risk mitigation plans for uncovered finished water storage facilities should account for cultural uses by Tribes.

In response to the concerns expressed by Tribal representatives, EPA noted that the LT2ESWTR proposal is designed to minimize costs by targeting higher risk systems, and includes other provisions, described earlier, to reduce burden. Moreover, the projected benefits of the rule substantially exceed costs. EPA also explained that capital projects related to the rule would be eligible for Federal funding sources, such as the Drinking Water State Revolving Fund, due to the health risks associated with *Cryptosporidium*. The LT2ESWTR Economic Analysis (USEPA 2003a) provides an analysis of the impact of the LT2ESWTR on Tribes. EPA has identified 67 Tribal water systems that would be subject to the LT2ESWTR.

In addition to these direct consultations with State, local, and Tribal governments, EPA posted a pre-proposal draft of the LT2ESWTR proposal on an EPA Internet site (*http://www.epa.gov/safewater/*) in November 2001. EPA received comments on this pre-proposal draft from ASDWA and six States, several public water systems owned by local governments, as well as private water systems, laboratories, and other stakeholders. Among the concerns raised by commenters representing State and local governments were the following: early implementation of monitoring by large systems; flexibility for States in awarding treatment credits to different *Cryptosporidium* control technologies; and the added burden of the rule on systems and States.

EPA has addressed these concerns in developing the LT2ESWTR proposal. As described in section IV.J, EPA is planning to directly implement the large system monitoring requirements that occur during the first 2.5 years after promulgation. The planned approach is similar to that used for the UCMR, including an electronic data reporting system for storing monitoring results and tracking compliance. With this approach, States will be able to access data reported by their systems, thereby allowing States to exercise oversight of their systems during early implementation if they chose. However, EPA will take primary responsibility for providing technical assistance to systems and assessing compliance with monitoring requirements.

In regard to treatment credit for *Cryptosporidium* control technologies, the Agency has made substantial efforts to ensure that the criteria in today's proposal are based on the best available data. EPA has worked in partnership with industry and researchers to gather information, and proposed criteria for several microbial toolbox options reflect comments by the Science Advisory Board. In addition, today's proposal gives flexibility to States by allowing them to award different levels of *Cryptosporidium* treatment credit to their systems based on site-specific demonstrations.

With respect to the burden the LT2ESWTR would place on water systems and States, EPA has, as described previously in this preamble, attempted to minimize overall costs under the proposed LT2ESWTR. This is achieved through risk-targeting of additional treatment requirements, allowing most small systems to avoid *Cryptosporidium* monitoring costs through *E. coli* screening, and facilitating the use of lower cost treatment technologies like UV.

In summary, EPA has concluded that the proposed option for the LT2ESWTR is needed to provide a significant public health benefit by reducing exposure to *Cryptosporidium*. While many public water systems achieve adequate control of *Cryptosporidium*, additional treatment should be required for filtered systems with elevated source water pathogen levels and for unfiltered systems. The availability of improved analytical methods allows additional treatment requirements to be targeted to higher risk systems, and the development of technologies like UV makes it feasible for systems to provide additional treatment. The monetized benefits of today's proposal significantly exceed total costs, and EPA believes there will be substantial unquantified benefits as well.

f. *Regulatory alternatives considered.* As required under section 205 of UMRA, EPA considered several regulatory alternatives to address systems at risk for contamination by microbial pathogens, specifically including *Cryptosporidium*. A detailed discussion of these alternatives can be found in section VI of the preamble and also in the Economic Analysis for the LT2ESWTR (USEPA 2003a).

g. *Selection of the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.* Among the regulatory alternatives considered for the LT2ESWTR, as described in section VI, the Agency believes the proposed alternative is the most cost-effective that achieves the objectives of the rule. The objective of the LT2ESWTR is to reduce risk from *Cryptosporidium* and other pathogens in systems where current regulations do not provide sufficient protection.

The Agency evaluated a less costly and less burdensome alternative.

However, this alternative would provide no benefit to several thousand consumers who, under the proposed alternative, would receive benefits that most likely exceed their costs, based on Agency estimates. This is illustrated in the LT2ESWTR Economic Analysis (USEPA 2003a). By failing to reduce risk for consumers where additional treatment requirements would be cost-effective, the less costly alternative does not appear to achieve the objectives of the LT2ESWTR.

The other alternatives considered by the Agency achieve the objectives of the rule, but are more costly, more burdensome, and potentially less cost-effective. The proposed alternative targets additional treatment requirements to systems with the highest vulnerability to *Cryptosporidium*, and maximizes net benefits under a broad range of conditions (USEPA 2003a). Consequently, the Agency has found the proposed alternative to be the most cost-effective among those that achieve the objectives of the rule.

3. Impacts on Small Governments

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA. As described in section VII.C, EPA has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Estimated annual expenditures by small systems for the LT2ESWTR range from $7.9 to $13.0 million at a 3% discount rate and $8.0 to $13.0 million at a 7% discount rate. While the treatment requirements of the LT2ESWTR apply uniformly to both small and large public water systems, large systems bear a majority of the total costs of compliance with the rule. This is due to the fact that large systems treat a majority of the drinking water that originates from surface water sources.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule may have federalism implications, because it may impose substantial direct compliance costs on State or local governments, and the Federal government will not provide the funds necessary to pay those costs. The proposed rule may result in expenditures by State, local, and Tribal governments, in the aggregate of $100 million or more in any one year. Costs are estimated to range from $73 to $111 million at a 3 percent discount rate and $81 to $121 million using a 7 percent discount rates based on the median distribution modeled from ICRSSL and Information Collection Rule *Cryptosporidium* occurrence data sets. Accordingly, EPA provides the following federalism summary impact statement as required by section 6(b) of Executive Order 13132.

EPA consulted with representatives of State and local officials early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. Section VII.D.2.e describes EPA's consultation with representatives of State and local officials. This consultation included State and local government representatives on the Stage 2 M–DBP Federal Advisory Committee, the representatives from small local governments to the SBAR panel, a meeting with representatives from ASDWA, NGA, NCSL, ICMA, NLC, the County Executives of America, and health departments, consultation with Tribal governments at four meetings, and comments from State and local governments on a pre-proposal draft of the LT2ESWTR.

Representatives of State and local officials were generally concerned with ensuring that drinking water regulations are adequately protective of public health and that any additional regulations achieve significant health benefits in return for required expenditures. They were specifically concerned with the burden of the proposed rule, both in cost and technical complexity, giving flexibility to systems and States, balancing the control of microbial risks and DBP risks, funding for implementing new regulations, equal protection for small systems, and early implementation of monitoring by large systems.

EPA has concluded that the proposed LT2ESWTR is needed to reduce the public health risk associated with *Cryptosporidium* in drinking water. Estimated benefits for the rule are significantly higher than costs. Further, as described in this section and in section VII.D.2.e, the Agency believes that today's proposal addresses many of the concerns expressed by representatives of government officials.

Under the proposed LT2ESWTR, expenditures for additional treatment are targeted to the fraction of systems with the highest vulnerability to *Cryptosporidium*, thereby minimizing burden for the majority of systems that will not be required to provide additional treatment. The microbial toolbox of compliance options will provide flexibility to systems in meeting additional treatment requirements, and States have the flexibility to award treatment credits based on site-specific demonstrations. Disinfection profiling provisions are intended to ensure that systems do not reduce microbial protection as they take steps to reduce exposures to DBPs.

The LT2ESWTR achieves equal public health protection for small systems. However, the use of *E. coli* monitoring by small systems as a screening analysis to determine the need for *Cryptosporidium* monitoring will reduce monitoring costs for most small systems. Capital projects related to the rule would be eligible for funding from the Drinking Water State Revolving Fund, which includes specific funding for small communities. EPA is planning to support the initial monitoring by large systems that takes place within the first 2.5 years after promulgation. This will substantially reduce the burden on States associated with early implementation of monitoring requirements.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. 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 9, 2000), requires EPA

to develop ''an accountable process to ensure meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Under Executive Order 13175, EPA may not issue a regulation that has Tribal 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 Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement.

EPA has concluded that this proposed rule may have Tribal implications, because it may impose substantial direct compliance costs on Tribal governments, and the Federal government will not provide the funds necessary to pay those costs. EPA has identified 67 Tribal water systems serving a total population of 78,956 that may be subject to the LT2ESWTR. They will bear an estimated total annualized cost of $135,974 at a 3 percent discount rate ($138,910 at 7 percent) to implement this rule as proposed. Estimated mean annualized cost per system ranges from $792 to $23,979 at a 3 percent discount rate ($844 to $26,194 at 7 percent) depending on system size (see section 7 of the LT2ESWTR Economic Analysis (USEPA 2003a) for details). Accordingly, EPA provides the following Tribal summary impact statement as required by section 5(b) of Executive Order 13175.

EPA consulted with representatives of Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Section VII.D.2.e describes EPA's outreach and consultation with Tribes, which included presentations on the LT2ESWTR at four Tribal conferences and meetings, mailing fact sheets and presentation materials regarding the proposal to Tribes on several occasions, and a teleconference with representatives of Tribal officials to comment on the proposed rule.

As discussed in section VII.D.2.e, Tribal representatives stated that protection of public health is important regardless of the number of people a system is serving, and they recognized that the LT2ESWTR would provide a public health benefit. However, Tribal representatives were concerned about the availability of funding to implement the regulation and asked about the projected impact on Tribes (*e.g.*, number of Tribal surface water systems that would be affected). Also, the Tribal representative to the Federal Advisory Committee was concerned that risk mitigation plans for uncovered finished water storage facilities account for cultural uses by Tribes.

EPA has concluded that the proposed LT2ESWTR is needed to reduce the risk associated with *Cryptosporidium* in public water systems using surface water sources. Projected benefits for today's proposal are substantially greater than costs. Moreover, as described in this section and in section VII.D.2.e, today's proposal addresses many of the concerns stated by Tribal representatives.

The LT2ESWTR will provide equivalent public health protection to all system sizes, including Tribal systems. By targeting additional treatment requirements to higher risk systems, the LT2ESWTR will minimize overall burden in comparison with requiring additional treatment by all systems. In addition, the provision in the proposal allowing *E. coli* screening to determine if *Cryptosporidium* monitoring is necessary will reduce monitoring costs for many small Tribal systems. (EPA notes that 66 of the 67 Tribal systems identified by the Agency as subject to the LT2ESWTR are small systems.) Due to the health risks associated with *Cryptosporidium*, capital expenditures needed for compliance with the rule will be eligible for Federal funding sources, specifically the Drinking Water State Revolving Fund. EPA is developing guidance that will address consideration of Tribal cultural uses of uncovered finished water storage facilities.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

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

This proposed rule is subject to the Executive Order because it is an economically significant regulatory action as defined in Executive Order 12866, and we believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of *Cryptosporidium* on children. The results of this evaluation are contained in *Cryptosporidium*: Risk for Infants and Children (USEPA 2001d) and described in this section of this preamble. Further, while available information is not adequate to conduct a quantitative risk assessment specifically on children, EPA has assessed the risk associated with *Cryptosporidium* in drinking water for the general population, including children. This assessment is described in the Economic Analysis for the LT2ESWTR (USEPA 2003a) and is summarized in section VI of this preamble. Copies of these documents and supporting information are available in the public docket for today's proposal.

Cryptosporidiosis in children is similar to adult disease (USEPA 2001d). Diarrhea is the most common symptom. Other common symptoms in otherwise healthy (*i.e.*, immunocompetent) children include anorexia, vomiting, abdominal pain, fever, dehydration and weight loss.

The risk of illness and death due to cryptosporidiosis depends on several factors, including age, nutrition, exposure, genetic variability, disease and the immune status of the individual. Mortality resulting from diarrhea generally occurs at a greater rate among the very young and elderly (Gerba *et al.*, 1996). During the 1993 Milwaukee drinking water outbreak, associated mortalities in children were reported. Also, children with laboratory-confirmed cryptosporidiosis were more likely to have an underlying disease that altered their immune status (Cicirello *et al.*, 1997). In that study, the observed association between increasing age of children and increased numbers of laboratory-confirmed cryptosporidiosis suggested to the authors that the data

are consistent with increased tap water consumption of older children. However, due to data limitations, this observation could not be adequately analyzed. Asymptomatic infection, especially in underdeveloped communities, can have a substantial effect on childhood growth (Bern *et al.*, 2002).

Cryptosporidiosis appears to be more prevalent in populations, such as children, that may not have established immunity against the disease and may be in greater contact with environmentally contaminated surfaces (DuPont *et al.*, 1995). In the United States, children aged one to four years are more likely than adults to have the disease. The most recent reported data on cryptosporidiosis shows the occurrence rate (for the year 1999) is higher in children ages one to four (3.03 incidence rate per 100,000) than in any adult age group (CDC, 2001). Evidence from blood sera antibodies collected from children during the 1993 Milwaukee outbreak suggest that children had greater levels of *Cryptosporidium* infection than predicted for the general community (based on the random-digit dialing telephone survey method) (McDonald *et al.*, 2001).

Data indicate a lower incidence of cryptosporidiosis infection during the first year of life. This is attributed to breast-fed infants consuming less tap water and, hence, having less exposure to *Cryptosporidium*, as well as the possibility that mothers confer short term immunity to their children. For example, in a survey of over 30,000 stool sample analyses from different patients in the United Kingdom, the one to five year age group suffered a much higher infection rate than individuals less than one year of age. For children under one year of age, those older than six months of age showed a higher rate of infection than individuals aged less than six months (Casemore, 1990). Similarly, in the U.S., of 2,566 reported *Cryptosporidium* illnesses in 1999, 525 occurred in ages one to four (incidence rate of 3.03 per 100,000) compared with 58 cases in infants under one year (incidence rate of 1.42 per 100,000) (CDC, 2001).

An infected child may spread the disease to other children or family members (Heijbel *et al.*, 1987, Osewe *et al.*, 1996). Millard *et al.* (1994) documented greater household secondary transmission of cryptosporidiosis from children than from adults to household and other close contacts. Children continued to shed oocysts for more than two weeks (mean 16.5 days) after diarrhea cessation (Tangerman *et al.*, 1991).

While *Cryptosporidium* may have a disproportionate effect on children, available data are not adequate to distinctly assess the health risk for children resulting from *Cryptosporidium*-contaminated drinking water. In assessing risk to children when evaluating regulatory alternatives for the LT2ESWTR, EPA assumed the same risk for children as for the population as a whole.

Section VI of this preamble presents the regulatory alternatives that EPA evaluated for the proposed LT2ESWTR. Among the four alternatives the Agency considered, three involved a risk-targeting approach in which additional *Cryptosporidium* treatment requirements are based on source water monitoring results. A fourth alternative involved additional treatment requirements for all systems.

The alternative requiring additional treatment by all systems was not selected because of concerns about feasibility and because it imposed costs but provided few benefits to systems with high quality source water (*i.e.*, relatively low *Cryptosporidium* risk). The three risk-targeting alternatives were evaluated based on several factors, including costs, benefits, net benefits, feasibility of implementation, and other specific impacts (*e.g.*, impacts on small systems or sensitive subpopulations).

The proposed alternative was recommended by the M–DBP Federal Advisory Committee and selected by EPA as the Preferred Regulatory Alternative because it was deemed feasible and provides significant public health benefits in terms of avoided illnesses and deaths. EPA's analysis of benefits and costs indicates that the proposed alternative ranks highly among those evaluated with respect to maximizing net benefits, as shown in the LT2ESWTR Economic Analysis (USEPA 2003a). This document is available in the docket for this action.

The result of the LT2ESWTR will be a reduction in the risk of illness for the entire population, including children. Because available evidence indicates that children may be more vulnerable to cryptosporidiosis than the rest of the population, the LT2ESWTR may, therefore, result in greater risk reduction for children than for the general population.

The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to *Cryptosporidium*.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This determination is based on the following analysis.

The first consideration is whether the LT2ESWTR would adversely affect the supply of energy. The LT2ESWTR does not regulate power generation, either directly or indirectly. The public and private utilities that the LT2ESWTR regulates do not, as a rule, generate power. Further, the cost increases borne by customers of water utilities as a result of the LT2ESWTR are a low percentage of the total cost of water, except for a very few small systems that might install advanced technologies and then need to spread that cost over a narrow customer base. Therefore, the customers that are power generation utilities are unlikely to face any significant effects as a result of the LT2ESWTR. In sum, the LT2ESWTR does not regulate the supply of energy, does not generally regulate the utilities that supply energy, and is unlikely to affect significantly the customer base of energy suppliers. Thus, the LT2ESWTR would not translate into adverse effects on the supply of energy.

The second consideration is whether the LT2ESWTR would adversely affect the distribution of energy. The LT2ESWTR does not regulate any aspect of energy distribution. The utilities that are regulated by the LT2ESWTR already have electrical service. As derived later in this section, the proposed rule is projected to increase peak electricity demand at water utilities by only 0.02 percent. Therefore, EPA estimates that the existing connections are adequate and that the LT2ESWTR has no discernable adverse effect on energy distribution.

The third consideration is whether the LT2ESWTR would adversely affect the use of energy. Because some drinking water utilities are expected to add treatment technologies that use electrical power, this potential impact is evaluated in more detail. The analyses that underlay the estimation of costs for the LT2ESWTR are national in scope and do not identify specific plants or utilities that may install treatment in response to the rule. As a result, no analysis of the effect on specific energy suppliers is possible with the available

data. The approach used to estimate the impact of energy use, therefore, focuses on national-level impacts. The analysis estimates the additional energy use due to the LT2ESWTR, and compares that to the national levels of power generation in terms of average and peak loads.

The first step in the analysis is to estimate the energy used by the technologies expected to be installed as a result of the LT2ESWTR. Energy use is not directly stated in Technologies and Costs for Control of Microbial Contaminants and Disinfection By-Products (USEPA 2003c), but the annual cost of energy for each technology addition or upgrade necessitated by the LT2ESWTR is provided. An estimate of plant-level energy use is derived by dividing the total energy cost per plant for a range of flows by an average national cost of electricity of $0.076/kWh (USDOE EIA, 2002). These calculations are shown in detail in Chapter 7 of the Economic Analysis for the LT2ESWTR (USEPA 2003a). The energy use per plant for each flow range and technology is then multiplied by the number of plants predicted to install each technology in a given flow range. The energy requirements for each flow range are then added to produce a national total. No electricity use is subtracted to account for the technologies that may be replaced by new technologies, resulting in a conservative estimate of the increase in energy use. Results of the analysis are shown in Table VII–5 for each of the modeled *Cryptosporidium* occurrence distributions. The results range from an incremental national annual energy usage of 0.12 million megawatt-hours (mW) for the modeled Information Collection Rule occurrence distribution to 0.07 million mW for the modeled ICRSSL occurrence distribution.

TABLE VII–5.—TOTAL INCREASED ANNUAL NATIONAL ENERGY USAGE ATTRIBUTABLE TO THE LT2ESWTR

Technology	ICR		ICRSSL		ICRSSM	
	Plants selecting technology	Total annual energy required (kWh/yr)	Plants selecting technology	Total annual energy required (kWh/yr)	Plants selecting technology	Total annual energy required (kWh/yr)
	A	B	C	D	E	F
ClO_2	77	343,297	61	268,861	70	312,036
UV	998	86,827,218	490	52,212,046	632	64,515,863
O_3 (0.5 log)	26	12,524,670	19	10,328,359	21	11,467,703
O_3 (1.0 log)	24	12,456,132	12	6,119,824	21	10,759,696
O_3 (2.0 log)	9	7,324,561	0	35,259	2	1,787,144
MF/UF	10	5,691,144	8	4,507,577	5	2,790,401
Bag Filters	1,545	1,631,873	1,236	1,306,067	1,441	1,522,243
Cartridge Filters	190	76,793	17	6,254	52	19,686
Total	2,878	126,875,687	1,844	74,784,249	2,244	93,174,772

Source: The LT2ESWTR Economic Analysis (USEPA 2003a).

To determine if the additional energy required for systems to comply with the rule would have a significant adverse effect on the use of energy, the numbers in Table VII–5 are compared to the national production figures for electricity. According to the U.S. Department of Energy's Information Administration, electricity producers generated 3,800 million mW of electricity in 2001 (USDOE EIA, 2002). Therefore, even using the highest assumed energy use for the LT2ESWTR, the rule when fully implemented would result in only a 0.003 percent increase in annual average energy use.

In addition to average energy use, the impact at times of peak power demand is important. To examine whether increased energy usage might significantly affect the capacity margins of energy suppliers, their peak season generating capacity reserve was compared to an estimate of peak incremental power demand by water utilities.

Both energy use and water use are highest in the summer months, so the most significant effects on supply would be seen then. In the summer of 2001, U.S. generation capacity exceeded consumption by 15 percent, or approximately 120,000 mW (USDOE EIA 2002). Assuming around-the-clock operation of water treatment plants, the total energy requirement can be divided by 8,760 hours per year to obtain an average power demand of 15 mW for the modeled Information Collection Rule occurrence distribution. A more detailed derivation of this value is shown in Appendix P of the Economic Analysis for the LT2ESWTR (USEPA 2003a). Assuming that power demand is proportional to water flow through the plant, and that peak flow can be as high as twice the average daily flow during the summer months, about 30 mW could be needed for treatment technologies installed to comply with the LT2ESWTR. This is only 0.024 percent of the capacity margin available at peak use.

Although EPA recognizes that not all areas have a 15 percent capacity margin and that this margin varies across regions and through time, this analysis reflects the effect of the rule on national energy supply, distribution, or use. While certain areas, notably California, have experienced shortfalls in generating capacity in the recent past, a peak incremental power requirement of 30 mW nationwide is not likely to significantly change the energy supply, distribution, or use in any given area. Considering this analysis, EPA has concluded that LT2ESWTR is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

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

The proposed rulemaking involves technical standards. EPA proposes to use several voluntary consensus standards (VCS) methods for enumerating *E. coli* in surface waters. These methods are listed in section IV.K.2, Table IV–37, and were developed or adopted by the following organizations: American Public Health Association in Standard Methods for the Examination of Water and Wastewater, 20th, 19th, and 18th Editions, the American Society of Testing Materials in Annual Book of ASTM Standards—Water and Environmental Technology, and the Association of Analytical Chemists in Official Methods of Analysis of AOAC International, 16th Edition. These methods are available in the docket for today's proposal. EPA has concluded that these methods have the necessary sensitivity and specificity to meet the data quality objectives of the LT2ESWTR.

The Agency conducted a search to identify potentially applicable voluntary consensus standards for analysis of *Cryptosporidium*. However, we identified no such standards. Therefore, EPA proposes to use the following methods for *Cryptosporidium* analysis: Method 1622: ''*Cryptosporidium* in Water by Filtration/IMS/FA'' (EPA–821-R–01–026, April 2001) (USEPA 2001e) and Method 1623: ''*Cryptosporidium* and Giardia in Water by Filtration/IMS/FA'' (EPA 821-R–01–025, April 2001) (USEPA 2001f).

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify additional potentially applicable voluntary consensus standards, and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations or Low-Income Populations

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and consulted with minority and low-income stakeholders.

Two aspects of the LT2ESWTR comply with the order that requires the Agency to consider environmental justice issues in the rulemaking and to consult with stakeholders representing a variety of economic and ethnic backgrounds. These are: (1) The overall nature of the rule, and (2) the convening of a stakeholder meeting specifically to address environmental justice issues.

The Agency built on the efforts conducted during the development of the IESWTR to comply with Executive Order 12898. On March 12, 1998, the Agency held a stakeholder meeting to address various components of pending drinking water regulations and how they might impact sensitive subpopulations, minority populations, and low-income populations. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Programs. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants were national, State, Tribal, municipal, and individual stakeholders. EPA conducted the meeting by video conference call between eleven cities. The major objectives for the March 12, 1998, meeting were the following:

- Solicit ideas from stakeholders on known issues concerning current drinking water regulatory efforts;
- Identify key areas of concern to stakeholders; and
- Receive suggestions from stakeholders concerning ways to increase representation of communities in OGWDW regulatory efforts.

In addition, EPA developed a plain-English guide for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulations.

The LT2ESWTR and other drinking water regulations promulgated or under development are expected to have a positive effect on human health regardless of the social or economic status of a specific population. The LT2ESWTR serves to provide a similar level of drinking water protection to all groups. Where water systems have high *Cryptosporidium* levels, they must treat their water to achieve a specified level of protection. Further, to the extent that levels of *Cryptosporidium* in drinking water might be disproportionately high among minority or low-income populations (which is unknown), the LT2ESWTR will work to remove those differences. Thus, the LT2ESWTR meets the intent of Federal policy requiring incorporation of environmental justice into Federal agency missions.

The LT2ESWTR applies uniformly to CWSs, NTNCWSs, and TNCWSs that use surface water or GWUDI as their source. Consequently, this rule provides health protection from pathogen exposure equally to all income and minority groups served by surface water and GWUDI systems.

K. Consultations with the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with sections 1412 (d) and (e) of SDWA, the Agency has consulted with the Science Advisory Board (SAB), the National Drinking Water Advisory Council (NDWAC), and will consult with the Secretary of Health and Human Services regarding the proposed LT2ESWTR during the public comment period. EPA charged the SAB panel with reviewing the following aspects of the LT2ESWTR proposal:

- The analysis of *Cryptosporidium* occurrence, as described in Occurrence and Exposure Assessment for the LT2ESWTR (USEPA 2003b);
- The pre- and post-LT2ESWTR *Cryptosporidium* risk assessment, as described in Economic Analysis for the LT2ESWTR (USEPA 2003a); and
- The treatment credits for the following four microbial toolbox components: raw water off-stream storage, pre-sedimentation, lime softening, and lower finished water turbidity (described in section IV.C of this preamble).

EPA met with the SAB to discuss the LT2ESWTR on June 13, 2001 (Washington, DC), September 25–26, 2001 (teleconference), and December 10–12, 2001 (Los Angeles, CA). Written comments from the December 2001 meeting of the SAB addressing the occurrence analysis and risk assessment were generally supportive. EPA has responded to the SAB's recommendations for *Cryptosporidium* occurrence analysis in the current draft of Occurrence and Exposure Assessment for the LT2ESWTR (USEPA 2003b), and EPA has addressed the SAB's comments on risk assessment in the current draft of Economic Analysis for the LT2ESWTR (USEPA 2003a). Comments from the SAB on the microbial toolbox components and the Agency's responses to those comments are described in section IV.C of this preamble.

EPA met with the NDWAC on November 8, 2001, in Washington, DC, to discuss the LT2ESWTR proposal. EPA specifically requested comments from the NDWAC on the regulatory approach taken in the proposed microbial toolbox (*e.g.*, proposal of specific design and implementation criteria for treatment credits). The Council was generally supportive of EPA establishing criteria for awarding

treatment credit to toolbox components, but recommended that EPA provide flexibility for States to address system specific situations. EPA believes that the demonstration of performance credit, described in section IV.C.17, provides this flexibility by allowing States to award higher or lower levels of treatment credit for microbial toolbox components based on site specific conditions. Minutes of the NDWAC and SAB meetings are in the docket for today's proposal.

L. Plain Language

Executive Order 12866 encourages Federal agencies to write rules in plain language. EPA invites comments on how to make this proposed rule easier to understand. For example: Has EPA organized the material to suit commenters' needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that is not clear? Would a different format (grouping and ordering of sections, use of headings, paragraphs) make the rule easier to understand? Could EPA improve clarity by adding tables, lists, or diagrams? What else could EPA do to make the rule easier to understand?

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List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: July 11, 2003.

Linda J. Fisher,

Acting Administrator.

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.2 is amended by adding, in alphabetical order, definitions for Bag filters, Bank filtration, Cartridge filters, Flowing stream, Lake/reservoir, Membrane filtration, Off-stream raw water storage, Plant intake, Presedimentation, and Two-stage lime softening to read as follows:

§ 141.2 Definitions.

* * * * *

Bag filters are pressure-driven separation devices that remove particulate matter larger than 1 μm using an engineered porous filtration media through either surface or depth filtration. Bag filters are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

Bank filtration is a water treatment process that uses a pumping well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

* * * * *

Cartridge filters are pressure-driven separation devices that remove particulate matter larger than 1 μm using an engineered porous filtration media through either surface or depth filtration. Cartridge filters are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

* * * * *

Flowing stream is a course of running water flowing in a definite channel.

* * * * *

Lake/reservoir refers to a natural or man made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

* * * * *

Membrane filtration is a pressure-driven or vacuum-driven separation process in which particulate matter larger than 1 μm is rejected by an engineered barrier primarily through a size exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration (MF), ultrafiltration (UF), nanofiltration (NF), and reverse osmosis (RO).

* * * * *

Off-stream raw water storage refers to an impoundment in which water is stored prior to treatment and from which outflow is controlled.

* * * * *

Plant intake refers to the works or structures at the head of a conduit through which water is diverted from a source (*e.g.*, river or lake) into the treatment plant.

* * * * *

Presedimentation is a preliminary unit process used to remove gravel, sand and other particulate material from the source water through settling before it enters the main treatment plant.

* * * * *

Two-stage lime softening refers to a process for the removal of hardness by the addition of lime and consisting of two distinct unit clarification processes in series prior to filtration.

* * * * *

3. Appendix A to Subpart Q of part 141 is amended in section I, Part A by adding entry number 10:

Subpart Q—Public Notification of Drinking Water Violations.

APPENDIX A TO SUBPART Q OF PART 141—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]

Contaminant	MCL/MRDL/TT violations [2]		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR) [3]:				
A. Microbiological Contaminants				

APPENDIX A TO SUBPART Q OF PART 141—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1]—Continued

Contaminant	MCL/MRDL/TT violations [2]		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
* *	*	*	*	* *
10. LT2ESWTR violations	2	141.720–141.729	3	141.701–141.707; 141.711–141.713; 141.730
* *	*	*	*	* *

[1] Violations and other situations not listed in this table (*e.g.,* reporting violations and failure to prepare Consumer Confidence Reports) do not require notice, unless otherwise determined by the primary agency. Primary agencies may, at their option, also require a more stringent public notice tier (*e.g.,* Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § 141.202(a) and § 141.203(a).

[2] MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique

[3] The term Violations of National Primary Drinking Water Regulations (NPDWR) is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

4. Part 141 is amended by adding a new subpart W to read as follows:

Subpart W—Enhanced Filtration and Disinfection for *Cryptosporidium*

General Requirements

141.700 Applicability.
141.701 General requirements.

Source Water Monitoring Requirements

141.702 Source water monitoring.
141.703 Sampling schedules.
141.704 Sampling locations.
141.705 Analytical methods.
141.706 Requirements for use of an approved laboratory.
141.707 Reporting source water monitoring results.
141.708 Previously collected data.
141.709 Bin classification for filtered systems.

Disinfection Profiling and Benchmarking Requirements

141.710 [Reserved]
141.711 Determination of systems required to profile.
141.712 Schedule for disinfection profiling requirements.
141.713 Developing a profile.
141.714 Requirements when making a significant change in disinfection practice.

Treatment Technique Requirements

141.720 Treatment requirements for filtered systems.
141.721 Treatment requirements for unfiltered systems.
141.722 Microbial toolbox options for meeting ***Cryptosporidium*** treatment requirements.
141.723 [Reserved]
141.724 Requirements for uncovered finished water storage facilities.

Requirements for Microbial Toolbox Components

141.725 Source toolbox components.
141.726 Pre-filtration treatment toolbox components.
141.727 Treatment performance toolbox components.
141.728 Additional filtration toolbox components.
141.729 Inactivation toolbox components.

Reporting and Recordkeeping Requirements

141.730 Reporting requirements.
141.731 Recordkeeping requirements.

Subpart W—Enhanced Filtration and Disinfection for *Cryptosporidium*

General Requirements

§ 141.700 Applicability.

The requirements of this subpart apply to all subpart H systems. Failure to comply with any requirement of this subpart is a violation and requires public notification.

§ 141.701 General requirements.

(a) All subpart H systems, including wholesale systems, must characterize their source water to determine what (if any) additional treatment is necessary for *Cryptosporidium*, unless they meet the criteria in either paragraph (f) or (g) of this section.

(b) Systems serving at least 10,000 people that currently provide filtration or that are unfiltered and required to install filtration must conduct source water monitoring that includes *Cryptosporidium*, *E. coli*, and turbidity sampling and comply with the treatment requirements in § 141.720.

(c) Systems serving fewer than 10,000 people that currently provide filtration or that are unfiltered and required to install filtration must conduct source water monitoring consisting of *E. coli* sampling or sampling of an alternative indicator approved by the State. If the annual mean concentration of *E. coli* exceeds the levels specified in § 141.702(b), or if the level of a State-approved alternate indicator exceeds a State-approved alternative indicator trigger level, systems must conduct *Cryptosporidium* monitoring to complete the source water monitoring requirements and comply with the treatment requirements in § 141.720.

(d) Systems that are unfiltered and meet all the filtration avoidance criteria of § 141.71 must conduct source water monitoring consisting of *Cryptosporidium* sampling and comply with the treatment requirements in § 141.721.

(e) Systems must comply with the requirements in this subpart based on the schedule in the following table, except that systems are not required to conduct source water monitoring if they meet the criteria in paragraph (f) of this section for systems that currently provide filtration or that are unfiltered and required to install filtration or paragraph (g) of this section for systems that are unfiltered and meet all the filtration avoidance criteria of § 141.71:

COMPLIANCE REQUIREMENTS TABLE

Systems that are . . .	Must perform . . .[a,b]	And comply by . . .
(1) Subpart H systems serving ≥10,000 people that currently provide filtration or that are unfiltered and required to install filtration.	(i) 24 months of source water monitoring for *Cryptosporidium, E. coli* and turbidity at least once each month beginning no later than [Date 6 Months After Date of Publication of Final Rule in the **Federal Register**].	Submitting a monthly report to EPA no later than ten days after the end of the first month following the month when the sample is taken.
	(ii) Treatment technique implementation, if necessary.	Installing treatment and complying with the treatment technique no later than [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**][c].
(2) Subpart H systems serving ≥10,000 people that are unfiltered and meet the filtration avoidance criteria of § 141.71.	(i) 24 months of source water monitoring for *Cryptosporidium* at least once each month beginning no later than [Date 6 Months After Date of Publication of Final Rule in the **Federal Register**].	Submitting a monthly report to EPA no later than ten days after the end of the first month following the month when the sample is taken.
	(ii) Treatment technique implementation, if necessary.	Installing treatment and complying with the treatment technique no later than [Date 72 Months After Date of Publication of Final rule in the **Federal Register**][c].
(3) Subpart H systems serving <10,000 people that currently provide filtration or that are unfiltered and required to install filtration and are not required to monitor for *Cryptosporidium* based on *E. coli* or other indicator monitoring results[d].	12 months of source water monitoring for *E. coli* at least once every two weeks beginning no later than [Date 30 Months After Date of Publication of Final Rule in the **Federal Register**].	Submitting a monthly report to the State no later than ten days after the end of the first month following the month when the sample is taken.
(4) Subpart H systems serving <10,000 people that currently provide filtration or that are unfiltered and required to install filtration and must perform *Cryptosporidium* monitoring based on *E. coli* or other indicator monitoring results[d].	(i) 12 months of source water monitoring for *E. coli* at least once every two weeks beginning no later than [Date 30 Months After Date of Publication of Final Rule in the **Federal Register**] and 12 months of source water monitoring for *Cryptosporidium* at least twice each month beginning no later than [Date 48 Months After Date of Publication of Final Rule in the **Federal Register**].	Submitting a monthly report to the State no later than ten days after the end of the first month following the month when the sample is taken.
	(ii) Treatment technique implementation, if necessary.	Installing treatment and complying with the treatment technique no later than [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**][c].
(5) Subpart H systems serving <10,000 people that are unfiltered and meet the filtration avoidance criteria of § 141.71.	(i) 12 months of source water monitoring for *Cryptosporidium* at least twice each month beginning no later than [Date 48 Months After Date of Publication of Final Rule in the **Federal Register**].	Submitting a monthly report to the State no later than ten days after the end of the first month following the month when the sample is taken.
	(ii) Treatment technique implementation, if necessary.	Installing treatment and complying with the treatment technique no later than [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**][c].

[a] Any sampling performed more frequently than required must be evenly distributed over the sampling period.
[b] Systems may use data that meet the requirements in § 141.708 collected prior to the monitoring start date to substitute for an equivalent number of months at the end of the monitoring period.
[c] States may allow up to an additional two years for complying with the treatment technique requirement for systems making capital improvements.
[d] See § 141.702(b) to determine if *Cryptosporidium* monitoring is required.

(f) Systems that currently provide filtration or that are unfiltered and required to install filtration are not required to conduct source water monitoring under this subpart if the system currently provides or will provide a total of at least 5.5 log of treatment for *Cryptosporidium*, equivalent to meeting the treatment requirements of Bin 4 in § 141.720. Systems must notify the State not later than the date the system is otherwise required to submit a sampling schedule for monitoring under § 141.703 and must install and operate technologies to provide a total of at least 5.5 log of treatment for *Cryptosporidium* by the applicable date in paragraph (e) of this section.

(g) Systems that are unfiltered and meet all the filtration avoidance criteria of § 141.71 are not required to conduct source water monitoring under this subpart if the system currently provides or will provide a total of at least 3 log *Cryptosporidium* inactivation, equivalent to meeting the treatment requirements for unfiltered systems with a mean *Cryptosporidium* concentration of greater than 0.01 oocysts/L in § 141.721. Systems must notify the State not later than the date the system is otherwise required to submit a sampling schedule for monitoring under § 141.703. Systems must install and operate technologies to provide a total of at least 3 log *Cryptosporidium* inactivation by the applicable date in paragraph (e) of this section.

(h) Systems must comply with the uncovered finished water storage facility requirements in § 141.724 no later than [Date 36 Months After Date of Publication of Final Rule in the **Federal Register**].

Source Water Monitoring Requirements

§ 141.702 Source water monitoring.

(a) Systems must conduct initial source water monitoring as specified in § 141.701(b) through (f).

(b) Systems serving fewer than 10,000 people that provide filtration or that are unfiltered and required to install filtration must perform *Cryptosporidium* monitoring in accordance with § 141.701(e) if they meet any of the criteria in paragraphs (b)(1) through (4) of this section.

(1) For systems using lake/reservoir sources, an annual mean *E. coli* concentration greater than 10 *E. coli*/100 mL, based on monitoring conducted under this section, unless the State approves an alternative indicator trigger.

(2) For systems using flowing stream sources, an annual mean *E. coli* concentration greater than 50 *E. coli*/100 mL, based on monitoring conducted under this section, unless the State approves an alternative indicator trigger.

(3) If the State approves an alternative to the indicator trigger in paragraph (b)(1) or (b)(2) of this section, an annual concentration that exceeds a State-approved trigger level, including an alternative *E. coli* level, based on monitoring conducted under this section.

(4) The system does not conduct *E. coli* or other State-approved indicator monitoring as specified in § 141.701(e).

(c) Systems may submit *Cryptosporidium* data collected prior to the monitoring start date to meet the initial source water monitoring requirements of paragraphs (a) through (b) of this section. Systems may also use *Cryptosporidium* data collected prior to the monitoring start date to substitute for an equivalent number of months at the end of the monitoring period. All data submitted under this paragraph must meet the requirements in § 141.708.

(d) Systems must conduct a second round of source water monitoring in accordance with the requirements in § 141.701(b) through (e) of this section, beginning no later than the dates specified in paragraphs (d)(1) through (3) of this section, unless they meet the criteria in either paragraph § 141.701(f) or (g).

(1) Systems that serve at least 10,000 people must begin a second round of source water monitoring no later than [Date 108 Months After Date of Publication of Final Rule in the **Federal Register**].

(2) Systems serving fewer than 10,000 people that provide filtration or that are unfiltered and required to install filtration must begin a second round of source water monitoring no later than [Date 138 Months After Date of Publication of Final Rule in the **Federal Register**] and, if required to monitor for *Cryptosporidium* under paragraph (b) of this section, must begin *Cryptosporidium* monitoring no later than [Date 156 Months After Date of Publication of Final Rule in the **Federal Register**].

(3) Systems serving fewer than 10,000 people that are unfiltered and meet the filtration avoidance requirements of § 141.71 must begin a second round of source water monitoring no later than [Date 156 Months After Date of Publication of Final Rule in the **Federal Register**].

§ 141.703 Sampling schedules.

(a) Systems required to sample under § § 141.701 through 141.702 must submit a sampling schedule that specifies the calendar dates that all required samples will be taken.

(1) Systems serving at least 10,000 people must submit their sampling schedule for initial source water monitoring to EPA electronically at [insert Internet address] no later than [Date 3 Months After Date of Publication of Final Rule in the **Federal Register**].

(2) Systems serving fewer than 10,000 people that are filtered or that are unfiltered and required to install filtration must submit a sampling schedule for initial source water monitoring of *E. coli* or an alternative State-approved indicator to the State no later than [Date 27 Months After Date of Publication of Final Rule in the **Federal Register**].

(3) Filtered systems serving fewer than 10,000 people that are required to conduct *Cryptosporidium* monitoring and unfiltered systems serving fewer than 10,000 people must submit a sampling schedule for initial source water *Cryptosporidium* monitoring to the State no later than [Date 45 Months After Date of Publication of Final Rule in the **Federal Register**].

(4) Systems must submit a sampling schedule for the second round of source water monitoring to the State no later than 3 months prior to the date the system is required to begin the second round of monitoring under § 141.702(d).

(b) Systems must collect samples within two days of the dates indicated in their sampling schedule.

(c) If extreme conditions or situations exist that may pose danger to the sample collector, or which are unforeseen or cannot be avoided and which cause the system to be unable to sample in the required time frame, the system must sample as close to the required date as feasible and submit an explanation for the alternative sampling date with the analytical results.

(d) Systems that are unable to report a valid *Cryptosporidium* analytical result for a scheduled sampling date due to failure to comply with the analytical method requirements, including the quality control requirements in § 141.705, must collect a replacement sample within 14 days of being notified by the laboratory or the State that a result cannot be reported for that date and must submit an explanation for the replacement sample with the analytical results.

§ 141.704 Sampling locations.

(a) Unless specified otherwise in this section, systems required to sample under §§ 141.701 through 141.702 must collect source water samples from the plant intake prior to any treatment. Where treatment is applied in an intake pipe such that sampling in the pipe prior to treatment is not feasible, systems must collect samples as close to the intake as is feasible, at a similar depth and distance from shore.

(b) *Presedimentation.* Systems using a presedimentation basin must collect source water samples after the presedimentation basin but before any other treatment. Use of presedimentation basins during monitoring must be consistent with routine operational practice and the State may place reporting requirements to verify operational practices. Systems collecting samples after a presedimentation basin may not receive credit for the presedimentation basin under § 141.726(a).

(c) *Raw water off-stream storage.* Systems using an off-stream raw water storage reservoir must collect source water samples after the off-stream storage reservoir. Use of off-stream storage during monitoring must be consistent with routine operational practice and the State may place reporting requirements to verify operational practices.

(d) *Bank filtration.* The required sampling location for systems using bank filtration differs depending on whether the bank filtered water is treated by subsequent filtration for compliance with § 141.173(b) or § 141.552(a), as applicable.

(1) Systems using bank filtered water that is treated by subsequent filtration for compliance with § 141.173(b) or § 141.552(a), as applicable, must collect source water samples from the well (*i.e.*, after bank filtration), but before any other treatment. Use of bank filtration during monitoring must be consistent with routine operational practice and the State may place reporting

requirements to verify operational practices. Systems collecting samples after a bank filtration process may not receive credit for the bank filtration under § 141.726(c).

(2) Systems using bank filtration as an alternative filtration demonstration to meet their *Cryptosporidium* removal requirements under § 141.173(b) or § 141.552(a), as applicable, must collect source water samples in the surface water (*i.e.*, prior to bank filtration).

(3) Systems using a ground water source under the direct influence of surface water that meet all the criteria for avoiding filtration in § 141.71 and that do not provide filtration treatment must collect source water samples from the ground water (*e.g.*, the well).

(e) *Multiple sources.* Systems with plants that use multiple water sources at the same time, including multiple surface water sources and blended surface water and ground water sources, must collect samples as specified in paragraph (e)(1) or (2) of this section. The use of multiple sources during monitoring must be consistent with routine operational practice and the State may place reporting requirements to verify operational practices.

(1) If a sampling tap is available where the sources are combined prior to treatment, the sample must be collected from the tap.

(2) If there is not a sampling tap where the sources are combined prior to treatment, systems must collect samples at each source near the intake on the same day and must follow either paragraph (e)(2)(i) or (e)(2)(ii) of this section for sample analysis.

(i) Composite samples from each source into one sample prior to analysis. In the composite, the volume of sample from each source must be weighted according to the proportion of the source in the total plant flow at the time the sample is collected.

(ii) Analyze samples from each source separately as specified in § 141.705, and calculate a weighted average of the analysis results for each sampling date. The weighted average must be calculated by multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected, and then summing these values.

§ 141.705 Analytical methods.

(a) *Cryptosporidium.* Systems must use Method 1622 *Cryptosporidium in Water by Filtration/IMS/FA*, EPA 821–R–01–026, April 2001, or Method 1623 *Cryptosporidium and Giardia in Water by Filtration/IMS/FA*, EPA 821–R–01–025, April 2001, for *Cryptosporidium* analysis.

(1) Systems are required to analyze at least a 10 L sample or a packed pellet volume of at least 2 mL as generated by the methods listed in paragraph (a) of this section. Systems unable to process a 10 L sample must analyze as much sample volume as can be filtered by two filters approved by EPA for the methods listed in paragraph (a) of this section, up to a packed pellet volume of 2 mL.

(2)(i) Matrix spikes (MS) samples as required by the methods in paragraph (a) of this section must be spiked and filtered by a laboratory approved for *Cryptosporidium* analysis under § 141.706. The volume of the MS sample must be within 10 percent of the volume of the unspiked sample that is collected at the same time, and the samples must be collected by splitting the sample stream or collecting the samples sequentially. The MS sample and the associated unspiked sample must be analyzed by the same procedure.

(ii) If the volume of the MS sample is greater than 10 L, the system is permitted to filter all but 10 L of the MS sample in the field, and ship the filtered sample and the remaining 10 L of source water to the laboratory. In this case, the laboratory must spike the remaining 10 L of water and filter it through the filter used to collect the balance of the sample in the field.

(3) Each sample batch must meet the quality control criteria for the methods listed in paragraph (a) of this section. Flow cytometer-counted spiking suspensions must be used for MS samples and ongoing precision and recovery (OPR) samples; recovery for OPR samples must be 11% to 100%; for each method blank, oocysts must not be detected.

(4) Total *Cryptosporidium* oocysts as detected by fluorescein isothiocyanate (FITC) must be reported as determined by the color (apple green or alternative stain color approved under § 141.706(a) for the laboratory), size (4–6 μm) and shape (round to oval). This total includes all of the oocysts identified, less any atypical organisms identified by FITC, differential interference contrast (DIC) or 4′,6-diamindino-2-phenylindole (DAPI), including those possessing spikes, stalks, appendages, pores, one or two large nuclei filling the cell, red fluorescing chloroplasts, crystals, and spores.

(b) *E. coli.* Systems must use the following methods listed in this paragraph for enumeration of *E. coli* in source water (table will be replaced with CFR cite from Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Ambient Water when finalized—expected 2003):

METHODS FOR *E. coli* ENUMERATION [1]

Technique	Method [1]	EPA	VCSB methods		
			Standard methods	ASTM	AOAC
Most Probable Number (MPN)	LTB, EC–MUG		9221B.1/9221F		
	ONPG–MUG		9223B		991.15
	ONPG–MUG		9223B		
Membrane Filter (MF)	mFC→NA–MUG		9222D/9222G		
	ENDO→NA–MUG		9222B/9222G		
	mTEC agar	1103.1	9213D	D5392–93	
	Modified mTEC agar	Modified 1103.1			
	MI agar	EPA–600–R–013			
	m-ColiBlue24 broth				

[1] Tests must be conducted in a format that provides organism enumeration.

(1) The time from sample collection to initiation of analysis may not exceed 24 hours. Systems must maintain samples between 0°C and 10°C during transit.

(2) [Reserved]

(c) *Turbidity.* Systems must use methods for turbidity measurement approved in § 141.74.

§ 141.706 Requirements for use of an approved laboratory.

(a) *Cryptosporidium*. Systems must have *Cryptosporidium* samples analyzed by a laboratory that has passed a quality assurance evaluation under EPA's Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* in Water or a laboratory that has been certified for *Cryptosporidium* analysis by an equivalent State laboratory certification program.

(b) *E. coli*. Any laboratory certified by the EPA, the National Environmental Laboratory Accreditation Conference or the State for total coliform or fecal coliform analysis in source water under § 141.74 is deemed approved for *E. coli* analysis under this subpart when the laboratory uses the same technique for *E. coli* that the laboratory uses for source water in § 141.74.

(c) Turbidity. Measurements of turbidity must be made by a party approved by the State.

§ 141.707 Reporting source water monitoring results.

(a) All systems serving at least 10,000 people must submit the results of all initial source water monitoring required under § 141.702(a) to EPA electronically at [insert Internet address]. Systems that do not have the ability to submit data electronically may use an alternative format approved by EPA.

(b) Systems serving fewer than 10,000 people must submit the results of all initial source water monitoring required under § 141.702(a)–(b) to the State.

(c) All systems must submit the results from the second round of source water monitoring required under § 141.702(d) to the State.

(d) Source water monitoring analysis results must be submitted not later than ten days after the end of first month following the month when the sample is collected. The submission must include the applicable information in paragraphs (e)(1) and (2) of this section.

(e)(1) Systems must report the following data elements for each *Cryptosporidium* analysis:

(i) PWS ID
(ii) Facility ID
(iii) Sample collection point
(iv) Sample collection date
(v) Sample type (field or matrix spike)
(vi) Sample volume filtered (L), to nearest ¼ L
(vii) Was 100% of filtered volume examined
(viii) Number of oocysts counted

(i) For matrix spike samples, systems must also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples.

(ii) For samples in which less than 10 L is filtered or less than 100% of the sample volume is examined, systems must also report the number of filters used and the packed pellet volume.

(iii) For samples in which less than 100% of sample volume is examined, systems must also report the volume of resuspended concentrate and volume of this resuspension processed through immunomagnetic separation.

(2) Systems must report the following data elements for each *E. coli* analysis:

(i) PWS ID
(ii) Facility ID
(iii) Sample collection point
(iv) Sample collection date
(v) Analytical method number
(vi) Method type
(vii) Source type
(viii) *E. coli*/100 mL
(ix) Turbidity (Systems serving fewer than 10,000 people that are not required to monitor for turbidity under § 141.701(c) are not required to report turbidity with their *E. coli* results.)

§ 141.708 Previously collected data.

(a) Systems may comply with the initial monitoring requirements of § 141.702(a) using *Cryptosporidium* data collected before the system is required to begin monitoring if the system meets the conditions in paragraphs (b) through (h) of this section and EPA notifies the system that the data are acceptable.

(b) To be accepted, previously collected *Cryptosporidium* data must meet the conditions in paragraphs (b)(1) through (5) of this section.

(1) Samples were analyzed by laboratories using one of the analytical methods in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, 2001, EPA–821–R–01–025.*

(ii) *Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2001, EPA–821–R–01–026.*

(iii) *Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, 1999, EPA–821–R–99–006.*

(iv) *Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 1999, EPA–821–R–99–001.*

(2) Samples were collected no less frequently than each calendar month on a regular schedule, beginning no earlier than January 1999.

(3) Samples were collected in equal intervals of time over the entire collection period (*e.g.*, weekly, monthly). Sample collection interval may vary for the conditions specified in § 141.703(c) and (d) if the system provides documentation of the condition.

(4) Samples met the conditions for sampling location specified in § 141.704. The system must report the use of bank filtration, presedimentation, and raw water off-stream storage during sampling.

(5) For each sample, the laboratory analyzed at least 10 L of sample or at least 2 mL of packed pellet or as much volume as could be filtered by 2 filters approved by EPA for the methods listed in paragraph (b)(1) of this section, up to a packed pellet volume of 2 mL.

(c) The system must submit a letter to EPA concurrent with the submission of previously collected data certifying that the data meet the conditions in paragraphs (c)(1) and (2) of this section.

(1) The reported *Cryptosporidium* analysis results include all results generated by the system during the time period beginning with the first reported result and ending with the final reported result. This applies to samples that were collected from the sampling location specified for source water monitoring under this subpart, not spiked, and analyzed using the laboratory's routine process for the analytical methods listed in paragraph (a)(1) of this section.

(2) The samples were representative of a plant's source water(s) and the source water(s) have not changed.

(d) For each sample, the system must report the data elements in § 141.707(e)(1).

(e) The laboratory or laboratories that generated the data must submit a letter to EPA concurrent with the submission of previously collected data certifying that the quality control criteria specified in the methods listed in paragraph (b)(1) of this section were met for each sample batch associated with the previously collected data. Alternatively, the laboratory may provide bench sheets and sample examination report forms for each field, matrix spike, IPR, OPR, and method blank sample associated with the previously collected data.

(f) If a system has at least two years of *Cryptosporidium* data collected before [Date of Publication of Final Rule in the **Federal Register**] and the system intends to use these data to comply with the initial source water monitoring required under § 141.702(a) in lieu of conducting new monitoring, the system must submit to EPA, no later than [Date 2 Months After Date of Publication of Final Rule in the **Federal Register**], the previously collected data and the supporting information specified in this section. EPA will notify the system by [Date 4 Months After Date of Publication of Final Rule in the **Federal Register**] as to whether the data are acceptable. If EPA does not notify the system that the

submitted data are acceptable, the system must carry out initial source water as specified in § § 141.701 through 141.707 until EPA notifies the system that it has at least two years of acceptable data.

(g) If a system has fewer than two years of *Cryptosporidium* data collected before [Date of Publication of Final Rule in the **Federal Register**] and the system intends to use these data to meet, in part, the initial source water monitoring required under § 141.702(a), the system must submit to EPA, no later than [Date 8 Months After Date of Publication of Final Rule in the **Federal Register**], the previously collected data and the supporting information specified in this section. The system must carry out initial source water monitoring according to the requirements in §§ 141.701 through 141.707 until EPA notifies the system that it has at least two years of acceptable data.

(h) If a system has two or more years of previously collected data and the system intends to use these data to comply with the initial source water monitoring required under § 141.702(a), but the system also intends to carry out additional initial source water monitoring in order to base its determination of average *Cryptosporidium* concentration under § 141.709 or § 141.721 on more than two years of monitoring data, the system must submit to EPA, no later than [Date 8 Months After Date of Publication of Final Rule in the **Federal Register**], the previously collected data and the supporting information specified in this section. The system must carry out initial source water monitoring according to the requirements in § § 141.701 through 141.707 until EPA notifies the system that it has at least two years of acceptable data.

§ 141.709 Bin classification for filtered systems.

(a) Following completion of the initial source water monitoring required under § 141.702(a), filtered systems and unfiltered systems that are required to install filtration must calculate their initial *Cryptosporidium* bin concentration using the *Cryptosporidium* results reported under § 141.702(a), along with any previously collected data that satisfy the requirements of § 141.708, and following the procedures in paragraphs (b)(1) through (3) of this section.

(b)(1) For systems that collect a total of at least 48 samples, the *Cryptosporidium* bin concentration is equal to the arithmetic mean of all sample concentrations.

(2) For systems that serve at least 10,000 people and collect a total of at least 24 samples, but not more than 47 samples, the *Cryptosporidium* bin concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which *Cryptosporidium* samples were collected.

(3) For systems that serve fewer than 10,000 people and take at least 24 samples, the *Cryptosporidium* bin concentration is equal to the arithmetic mean of all sample concentrations.

(c) Filtered systems and unfiltered systems that are required to install filtration must determine their initial bin classification from the following table and using the *Cryptosporidium* bin concentration calculated under paragraph (a) of this section:

BIN CLASSIFICATION TABLE FOR FILTERED SYSTEMS

For systems that are:	With a *Cryptosporidium* bin concentration of . . .[1]	The bin classification is . . .
* * * required to monitor for *Cryptosporidium* under §§ 141.701 to 141.702.	*Cryptosporidium* < 0.075 oocyst/L	Bin 1
	0.075 oocysts/L ≤ *Cryptosporidium* < 1.0 oocysts/L	Bin 2
	1.0 oocysts/L ≤ *Cryptosporidium* < 3.0 oocysts/L	Bin 3
	Cryptosporidium ≥ 3.0 oocysts/L	Bin 4
* * * serving fewer than 10,000 people and NOT required to monitor for *Cryptosporidium* under § 142.702(b).	NA	Bin 1

[1] Based on calculations in paragraph (a) or (d) of this section, as applicable.

(d) Following completion of the second round of source water monitoring required under § 141.702(d), filtered systems and unfiltered systems that are required to install filtration must recalculate their *Cryptosporidium* bin concentration using the *Cryptosporidium* results reported under § 141.702(d) and following the procedures in paragraphs (b)(1) through (3) of this section. Systems must then determine their bin classification a second time using this *Cryptosporidium* bin concentration and the table in paragraph (c) of this section.

(e) Any filtered system or unfiltered system that is required to install filtration that fails to complete the monitoring requirements of § § 141.701 through 141.707 or choses not to monitor pursuant to § 141.701(f) must meet the treatment requirements for Bin 4 under § 141.720 by the date applicable under § 141.701(e).

Disinfection Profiling and Benchmarking Requirements

§ 141.710 [Reserved].

§ 141.711 Determination of systems required to profile.

(a) Subpart H of this part community and nontransient noncommunity water systems serving at least 10,000 people that do not have at least 5.5 log of *Cryptosporidium* treatment, equivalent to compliance with Bin 4 in § 141.720, in place prior to the date when the system is required to begin profiling in § 141.712 are required to develop *Giardia lamblia* and virus disinfection profiles.

(b) Subpart H community and nontransient noncommunity water systems serving fewer than 10,000 people that do not have at least 5.5 log of *Cryptosporidium* treatment, equivalent to compliance with Bin 4 in § 141.720, in place prior to the date when the system is required to begin profiling in § 141.712 are required to develop *Giardia lamblia* and virus disinfection profiles if any of the criteria in paragraphs (b)(1) through (3) of this section apply.

(1) TTHM levels in the distribution system are at least 0.064 mg/L as a locational running annual average (LRAA) at any monitoring site. Systems must base their TTHM LRAA calculation on data collected for compliance under subpart L of this part after [Date of Publication of Final Rule in the **Federal Register**], or as determined by the State.

(2) HAA5 levels in the distribution system are at least 0.048 mg/L as an LRAA at any monitoring site. Systems must base their HAA5 LRAA calculation on data collected for compliance under subpart L of this part after [Date of Publication of Final Rule in the **Federal Register**], or as determined by the State.

(3) The system is required to monitor for *Cryptosporidium* under § 141.701(c).

(c) In lieu of developing a new profile, systems may use the profile(s) developed under § 141.172 or § § 141.530 through 141.536 if the profile(s) meets the requirements of § 141.713(c).

§ 141.712 Schedule for disinfection profiling requirements.

(a) Systems must comply with the following schedule in the table in this paragraph:

SCHEDULE OF REQUIRED DISINFECTION PROFILING MILESTONES [1]

Activity	Date		
	Subpart H systems serving at least 10,000 people	Subpart H systems serving fewer than 10,000 people	
		Required to monitor for *Cryptosporidium*	Not required to monitor for *Cryptosporidium*
1. Report TTHM and HAA5 LRAA results to State.	NA	NA	[Date 42 Months After Date of Publication of Final Rule in the **Federal Register**].
2. Begin disinfection profiling [1,2]	[Date 24 Months After Date of Publication of Final Rule in the **Federal Register**].	[Date 54 Months After Date of Publication of Final Rule in the **Federal Register**].	[Date 42 Months After Date of Publication of Final Rule in the **Federal Register**] if required [3].
3. Complete disinfection profiling based on at least one year of data.	[Date 36 Months After Date of Publication of Final Rule in the **Federal Register**].	[Date 66 Months After Date of Publication of Final Rule in the **Federal Register**].	[Date 54 Months After Date of Publication of Final Rule in the **Federal Register**] if required [3].

[1] Systems with at least 5.5 log of *Cryptosporidium* treatment in place are not required to do disinfection profiling.
[2] Systems may use existing operational data and profiles as described in § 141.713(c).
[3] Systems serving fewer than 10,000 people are not required to conduct disinfection profiling if they are not required to monitor for *Cryptosporidium* and if their TTHM and HAA5 LRAAs do not exceed the levels specified in § 141.711(b).

(b) [Reserved]

§ 141.713 Developing a profile.

(a) Systems required to develop disinfection profiles under § 141.711 must follow the requirements of this section. Systems must monitor at least weekly for a period of 12 consecutive months to determeine the total log inactivation for *Giardia lamblia* and viruses. Systems must determine log inactivation for *Giardia lamblia* through the entire plant, based on $CT_{99.9}$ values in Tables 1.1 through 1.6, 2.1 and 3.1 of § 141.74(b) as applicable. Systems must determine log inactivation for viruses through the entire treatment plant based on a protocol approved by the State.

(b) Systems with a single point of disinfectant application prior to the entrance to the distribution system must conduct the monitoring in paragraphs (b)(1) through (4) of this section. Systems with more than one point of disinfectant application must conduct the monitoring in paragraphs (b)(1) through (4) of this section for each disinfection segment. Systems must monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in § 141.74(a).

(1) For systems using a disinfectant other than UV, the temperature of the disinfected water must be measured at each residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the State.

(2) For systems using chlorine, the pH of the disinfected water must be measured at each chlorine residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the State.

(3) The disinfectant contact time(s) (T) must be determined during peak hourly flow.

(4) The residual disinfectant concentration(s) (C) of the water before or at the first customer and prior to each additional point of disinfection must be measured during peak hourly flow.

(c) In lieu of conducting new monitoring under paragraph (b) of this section, systems may elect to meet the requirements of paragrphs (c)(1) or (2) of this section.

(1) Systems that have at least 12 consecutive months of existing operational data that are substantially equivalent to data collected under the provisions of paragraph (b) of this section may use these data to develop disinfection profiles as specified in this section if the system has neither made a significant change to its treatment practice nor changed sources since the data were collected. Systems using existing operational data may develop disinfection profiles for a period of up to three years.

(2) Systems may use disinfection profile(s) developed under § 141.172 or §§ 141.530 through 141.536 in lieu of developing a new profile if the system has neither made a significant change to its treatment practice nor changed sources since the profile was developed. Systems that have not developed a virus profile under § 141.172 or §§ 141.530 through 141.536 must develop a virus profile using the same monitoring data on which the *Giardia lamblia* profile is based.

(d) Systems must calculate the total inactivation ratio for *Giardia lamblia* as specified in paragraphs (d)(1) through (3) of this section.

(1) Systems using only one point of disinfectant application may determine the total inactivation ratio for the disinfection segment based on either of the methods in paragraph (d)(1)(i) or (ii) of this section.

(i) Determine one inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow.

(ii) Determine successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. The system must calculate the total inactivation ratio by determining ($CTcalc/CT_{99.9}$) for each sequence and then adding the ($CTcalc/CT_{99.9}$) values together to determine (Σ ($CTcalc/CT_{99.9}$)).

(2) Systems using more than one point of disinfectant application before the first customer must determine the CT value of each disinfection segment immediately prior to the next point of

disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The (CTcalc/$CT_{99.9}$) value of each segment and (Σ(CTcalc/$CT_{99.9}$)) must be calculated using the method in paragraph (d)(1)(ii) of this section.

(3) The system must determine the total logs of inactivation by multiplying the value calculated in paragraph (d)(1) or (d)(2) of this section by 3.0.

(4) Systems must calculate the log of inactivation for viruses using a protocol approved by the State.

(5) Systems must retain the disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the State for review as part of sanitary surveys conducted by the State.

§ 141.714 Requirements when making a significant change in disinfection practice.

(a) A system that is required to develop a disinfection profile under the provisions of this subpart and that plans to make a significant change to its disinfection practice must calculate a disinfection benchmark and must notify the State prior to making such a change. Significant changes to disinfection practice are defined in paragraphs (a)(1) through (4) of this section.

(1) Changes to the point of disinfection;

(2) Changes to the disinfectant(s) used in the treatment plant;

(3) Changes to the disinfection process; and

(4) Any other modification identified by the State.

(5) Systems must use the procedures specified in paragraphs (a)(5)(i) and (ii) of this section to calculate a disinfection benchmark.

(i) For the year of profiling data collected and calculated under § 141.713, or for each year with profiles covering more than one year, systems must determine the lowest mean monthly level of both *Giardia lamblia* and virus inactivation. Systems must determine the mean *Giardia lamblia* and virus inactivation for each calendar month for each year of profiling data by dividing the sum of daily or weekly *Giardia lamblia* and virus log inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly mean value (for systems with one year of profiling data) or the mean of the lowest monthly mean values (for systems with more than one year of profiling data) of *Giardia lamblia* and virus log inactivation in each year of profiling data.

(6) Systems must submit the information in paragraphs (a)(6)(i) through (iii) of this section when notifying the State that they are planning to make a significant change in disinfection practice.

(i) A description of the proposed change.

(ii) The disinfection profile and benchmark for *Giardia lamblia* and viruses determined under §§ 141.713 and 141.714.

(iii) An analysis of how the proposed change will affect the current level of disinfection.

Treatment Technique Requirements

§ 141.720 Treatment requirements for filtered systems.

(a) Filtered systems or systems that are unfiltered and required to install filtration must provide the level of treatment for *Cryptosporidium* specified in this paragraph, based on their bin classification as determined under § 141.709 and their existing treatment:

If the system bin classification is . . .	And the system uses the following filtration treatment in full compliance with subpart H, P, and T of this section (as applicable), then the additional treatment requirements are . . .			
	Conventional filtration treatment (including softening)	Direct filtration	Slow sand or diatomaceous earth filtration	Alternative filtration technologies
(1) Bin 1	No additional treatment	No additional treatment	No additional treatment	No additional treatment
(2) Bin 2	1 log treatment	1.5 log treatment	1 log treatment	([1])
(3) Bin 3	2 log treatment	2.5 log treatment	2 log treatment	([2])
(4) Bin 4	2.5 log treatment	3 log treatment	2.5 log treatment	([3])

[1] As determined by the State such that the total *Cryptosporidium* removal and inactivation is at least 4.0 log.
[2] As determined by the State such that the total *Cryptosporidium* removal and inactivation is at least 5.0 log.
[3] As determined by the State such that the total *Cryptosporidium* removal and inactivation is at least 5.5 log.

(b) Filtered systems must use one, or a combination, of the management and treatment options listed in § 141.722, termed the microbial toolbox, to meet the additional *Cryptosporidium* treatment requirements identified for each bin in paragraph (a) of this section.

(c) Systems classified in Bin 3 and Bin 4 must achieve at least 1 log of the additional treatment required under paragraph (a) of this section using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, and/or UV as specified in § 141.722.

§ 141.721 Treatment requirements for unfiltered systems.

(a) Following completion of the initial source water monitoring required under § 141.702(a), unfiltered systems that meet all filtration avoidance criteria of § 141.71 must calculate the arithmetic mean of all *Cryptosporidium* sample concentrations reported under § 141.702(a), along with any previously collected data that satisfy the requirements of § 141.708, and must meet the treatment requirements in paragraph (b)(1) or (2) of this section, as applicable, based on this concentration.

(b)(1) Unfiltered systems with a mean *Cryptosporidium* concentration of 0.01 oocysts/L or less must provide at least 2 log *Cryptosporidium* inactivation.

(2) Unfiltered systems with a mean *Cryptosporidium* concentration of greater than 0.01 oocysts/L must provide at least 3 log *Cryptosporidium* inactivation.

(c) Unfiltered systems must use chlorine dioxide, ozone, or UV as specified in § 141.722 to meet the *Cryptosporidium* inactivation requirements of this section.

(1) Unfiltered systems that use chlorine dioxide or ozone and fail to achieve the *Cryptosporidium* log inactivation required in paragraph (b)(1) or (2) of this section, as applicable, on more than one day in the calendar month are in violation of the treatment technique requirement.

(2) Unfiltered systems that use UV light and fail to achieve the *Cryptosporidium* log inactivation required in paragraph (b)(1) or (2) of this section, as applicable, in at least 95% of the water that is delivered to the public during each calendar month, based on monitoring required under paragraph § 141.729(d)(4), are in violation of the treatment technique requirement.

(d) Unfiltered systems must meet the combined *Cryptosporidium*, *Giardia*

lamblia, and virus inactivation requirements of this section and § 141.72(a) using a minimum of two disinfectants, and each disinfectant must separately achieve the total inactivation required for either *Cryptosporidium*, *Giardia lamblia*, or viruses.

(e) Following completion of the second round of source water monitoring required under § 141.702(d), unfiltered systems that meet all filtration avoidance criteria of § 141.71 must calculate the arithmetic mean of all *Cryptosporidium* sample concentrations reported under § 141.702(d) and must meet the treatment requirements in paragraph (b)(1) or (2) of this section, as applicable, based on this concentration.

(f) Any unfiltered system that meets all filtration avoidance criteria of § 141.71 and fails to complete the monitoring requirements of § § 141.701 through 141.707 or choses not to monitor pursuant to § 141.701(g) must meet the treatment requirements of paragraph (b)(2) of this section by the date applicable under § 141.701(e).

§ 141.722 Microbial toolbox options for meeting *Cryptosporidium* treatment requirements.

(a) To meet the additional *Cryptosporidium* treatment requirements of § § 141.720 and 141.721, systems must use microbial toolbox options listed in this follwing table that are designed, implemented, and operated in accordance with the requirements of this subpart.

MICROBIAL TOOLBOX: OPTIONS, CREDITS AND CRITERIA

Toolbox option	Proposed *Cryptosporidium* treatment credit with design and implementation criteria
Source Toolbox Components	
(1) Watershed control program	0.5 log credit for State approved program comprising EPA specified elements. Specific criteria are in § 141.725(a).
(2) Alternative source/intake management.	Bin classification based on concurrent *Cryptosporidium* monitoring. No presumptive credit. Specific criteria are in § 141.725(b).
Pre-Filtration Toolbox Components	
(3) Presedimentation basin with coagulation.	0.5 log credit for new basins with continuous operation and coagulant addition. No presumptive credit for basins existing when monitoring is required under § 141.702. Specific criteria are in § 141.726(a).
(4) Two-stage lime softening	0.5 log credit for two-stage softening with coagulant addition. Specific criteria are in § 141.726(b).
(5) Bank filtration	0.5 log credit for 25 foot setback; 1.0 log credit for 50 foot setback. No presumptive credit for bank filtration existing when monitoring is required under § 141.704(d)(1). Specific criteria are in § 141.726(c).
Treatment Performance Toolbox Components	
(6) Combined filter performance	0.5 log credit for combined filter effluent turbidity ≤ 0.15 NTU in 95% of samples each month. Specific criteria are in § 141.727(a).
(7) Individual filter performance	1.0 log credit for individual filter effluent turbidity ≤0.1 NTU in 95% of daily maximum samples each month and no filter >0.3 NTU in two consecutive measurements. Specific criteria are in § 141.727(b).
(8) Demonstration of performance	Credit based on a demonstration to the State through State approved protocol. Specific criteria are in § 141.727(c).
Additional Filtration Toolbox Components	
(9) Bag filters	1 log credit with demonstration of at least 2 log removal efficiency in challenge test; Specific criteria are in § 141.728(a).
(10) Cartridge filters	2 log credit with demonstration of at least 3 log removal efficiency in challenge test; Specific criteria are in § 141.728(a).
(11) Membrane filtration	Log removal credit up to the lower value of the removal efficiency demonstrated during the challenge test or verified by the direct integrity test applied to the system. Specific criteria are in § 141.728(b).
(12) Second stage filtration	0.5 log credit for a second separate filtration stage in treatment process following coagulation. Specific criteria are in § 141.728(c).
(13) Slow sand filers	2.5 log credit for second separate filtration process. Specific criteria are in § 141.728(d).
Inactivation Toolbox Components	
(14) Chlorine dioxide	Log credit based on demonstration of compliance with CT table. Specific criteria are in § 141.729(b).
(15) Ozone	Log credit based on demonstration of compliance with CT table. Specific criteria are in § 141.729(c).
(16) UV	Log credit based on demonstration of compliance with UV dose table. Specific criteria are in § 141.729(d).

(b) Failure to comply with the requirements of this section in accordance with the schedule in § 141.701(e) is a treatment technique violation.

§ 141.723 [Reserved]

§ 141.724 Requirements for uncovered finished water storage facilities.

(a) Systems using uncovered finished water storage facilities must comply with the conditions of one of the paragraphs (a)(1) through (3) of this section for each facility no later than the date specified in § 141.701(h).

(1) Systems must cover any uncovered finished water storage facility.

(2) Systems must treat the discharge from the uncovered finished water storage facility to the distribution system to achieve at least 4 log virus inactivation using a protocol approved by the State.

(3) Systems must have a State-approved risk mitigation plan for the uncovered finished water storage facility that addresses physical access and site security, surface water runoff, animal and bird waste, and ongoing water quality assessment, and includes a schedule for plan implementation. Systems must implement the risk

mitigation plan approved by the State. Systems must submit risk mitigation plans to the State for approval no later than [Date 24 Months After Date of Publication of Final Rule in the **Federal Register**].

(b) Failure to comply with the requirements of this section in accordance with the schedule in § 141.701(h) is a treatment technique violation.

Requirements for Microbial Toolbox Components

§ 141.725 Source toolbox components.

(a) Watershed control program.

(1) Systems that intend to qualify for a 0.5 log credit for *Cryptosporidium* removal for a watershed control program must notify the State no later than one year after completing the source water monitoring requirements of § 141.702(b) that they intend to develop a watershed control program and to submit it for State approval.

(2) Systems must submit a proposed initial watershed control plan and a request for plan approval and 0.5 log *Cryptosporidium* removal credit to the State no later than two years after completing the source water monitoring requirements of § 141.702(b). Based on a review of the initial proposed watershed control plan, the State may approve, reject, or conditionally approve the plan. If the plan is approved, or if the system agrees to implement the State's conditions for approval, the system is awarded a 0.5 log credit for *Cryptosporidium* removal to apply against additional treatment requirements.

(3) The application to the State for initial program approval must include elements in paragraphs (a)(3)(i) through (iii) of this section.

(i) An analysis of the vulnerability of each source to *Cryptosporidium*. The vulnerability analysis must address the watershed upstream of the drinking water intake and must include the following: a characterization of the watershed hydrology, identification of an ''area of influence'' (the area to be considered in future watershed surveys) outside of which there is no significant probability of *Cryptosporidium* or fecal contamination affecting the drinking water intake, identification of both potential and actual sources of *Cryptosporidium* contamination, the relative impact of the sources of *Cryptosporidium* contamination on the system's source water quality, and an estimate of the seasonal variability of such contamination.

(ii) An analysis of control measures that could mitigate the sources of *Cryptosporidium* contamination identified during the vulnerability analysis. The analysis of control measures must address their relative effectiveness in reducing *Cryptosporidium* loading to the source water and their feasability and sustainability.

(iii) A plan that establishes goals and defines and prioritizes specific actions to reduce source water *Cryptosporidium* levels. The plan must explain how the actions are expected to contribute to specific goals, identify watershed partners and their role(s), identify resource requirements and commitments, and include a schedule for plan implementation.

(4) Initial State approval of a watershed control plan and its associated 0.5 log *Cryptosporidium* removal credit is valid until the system completes the second round of *Cryptosporidium* monitoring required under § 141.702(d). Systems must complete the actions in paragraphs (a)(4)(i) through (iv) of this section to maintain State approval and the 0.5 log credit.

(i) Submit an annual watershed control program status report to the State by a date determined by the State. The annual watershed control program status report must describe the system's implementation of the approved plan and assess the adequacy of the plan to meet its goals. It must explain how the system is addressing any shortcomings in plan implementation, including those previously identified by the State or as the result of the watershed survey conducted under paragraph (a)(4)(ii) of this section. If it becomes necessary during implementation to make substantial changes in its approved watershed control program, the system must notify the State and provide a rationale prior to making any such changes. If any change is likely to reduce the level of source water protection, the system must also include the actions it will take to mitigate the effects in its notification.

(ii) Conduct an annual watershed sanitary survey and submit the survey report to the State for approval. The survey must be conducted according to State guidelines and by persons approved by the State to conduct watershed surveys. The survey must encompass the area of the watershed that was identified in the State-approved watershed control plan as the area of influence and, at a minimum, assess the priority activities identified in the plan and identify any significant new sources of *Cryptosporidium*.

(iii) Submit to the State a request for review and re-approval of the watershed control program and for a continuation of the 0.5 log removal credit for a subsequent approval period. The request must be provided to the State at least six months before the current approval period expires or by a date previously determined by the State. The request must include a summary of activities and issues identified during the previous approval period and a revised plan that addresses activities for the next approval period, including any new actual or potential sources of *Cryptosporidium* contamination and details of any proposed or expected changes from the existing State-approved program. The plan must address goals, prioritize specific actions to reduce source water *Cryptosporidium*, explain how actions are expected to contribute to achieving goals, identify partners and their role(s), resource requirements and commitments, and the schedule for plan implementation.

(iv) The annual status reports, watershed control plan and annual watershed sanitary surveys must be made available to the public upon request. These documents must be in a plain language style and include criteria by which to evaluate the success of the program in achieving plan goals. If approved by the State, the system may withhold portions of the annual status report, watershed control plan, and watershed sanitary survey based on security considerations.

(5) Unfiltered systems may not claim credit for *Cryptosporidium* removal under this option.

(b) Alternative source. (1) If approved by the State, a system may be classified in a bin under § 141.709 based on monitoring that is conducted concurrently with source water monitoring under § 141.701 and reflects a different intake location (either in the same source or for an alternate source) or a different procedure for managing the timing or level of withdrawal from the source.

(2) Sampling and analysis of *Cryptosporidium* in the concurrent round of monitoring must conform to the requirements for monitoring conducted under this subpart to determine bin classification. Systems must submit the results of all monitoring to the State, along with supporting information documenting the operating conditions under which the samples were collected.

(3) If the State classifies the system in a bin based on monitoring that reflects a different intake location or a different procedure for managing the timing or level of withdrawal from the source, the system must relocate the intake or use

the intake management strategy, as applicable, no later than the applicable date for treatment technique implementation in § 141.701. The State may specify reporting requirements to verify operational practices.

§ 141.726 Pre-filtration treatment toolbox components.

(a) *Presedimentation.* New presedimentation basins that meet the criteria in paragraphs (a)(1) through (4) of this section are eligible for 0.5 log *Cryptosporidium* removal credit. Systems with presedimentation basins existing when the system is required to conduct monitoring under § 141.702(a) may not claim this credit and, during periods when the basins are in use, must collect samples after the basins for the purpose of determining bin classification under § 141.709.

(1) The presedimentation basin must be in continuous operation and must treat all of the flow reaching the treatment plant.

(2) The system must continuously add a coagulant to the presedimentation basin.

(3) Presedimentation basin influent and effluent turbidity must be measured at least once per day or more frequently as determined by the State.

(4) The system must demonstrate on a monthly basis at least 0.5 log reduction of influent turbidity through the presedimentation process in at least 11 of the 12 previous consecutive months.

(i) The monthly demonstration of turbidity reduction must be based on the mean of daily turbidity readings collected under paragraph (a)(3) of this section and calculated as follows: $\log_{10}$(monthly mean of daily influent turbidity)—$\log_{10}$(monthly mean of daily effluent turbidity).

(ii) If the presedimentation process has not been in operation for 12 months, the system must verify on a monthly basis at least 0.5 log reduction of influent turbidity through the presedimentation process, calculated as specified in this paragraph, for at least all but any one of the months of operation.

(b) *Two-stage lime softening.* Systems that operate a two-stage lime softening plant are eligible for an additional 0.5 log *Cryptosporidium* removal credit if there is a second clarification step between the primary clarifier and filter(s) that is operated continuously. Both clarifiers must treat all of the plant flow and a coagulant, which may be excess lime or magnesium hydroxide, must be present in both clarifiers.

(c) *Bank filtration.* New bank filtration that serves as pretreatment to a filtration plant is eligible for either a 0.5 or a 1.0 log *Cryptosporidium* removal credit towards the requirements of this subpart if it meets the design criteria specified in paragraphs (c)(1) through (c)(5) of this section and the monitoring and reporting criteria of paragraph (c)(6) of this section. Wells with a ground water flow path of at least 25 feet are eligible for 0.5 log removal credit; wells with a ground water flow path of at least 50 feet are eligible for 1.0 log removal credit. The ground water flow path must be determined as specified in paragraph (c)(5) of this section.

(1) Only horizontal and vertical wells are eligible for bank filtration removal credit.

(2) Only wells in granular aquifers are eligible for bank filtration removal credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles, and minor cement. The aquifer material must be unconsolidated as demonstrated by the aquifer characterization specified in paragraph (c)(3) of this section, unless the system meets the conditions of paragraph (c)(4) of this section. Wells located in consolidated aquifers, fractured bedrock, karst limestone, and gravel aquifers are not eligible for bank filtration removal credit.

(3) A system seeking removal credit for bank filtration must characterize the aquifer at the well site to determine aquifer properties. The aquifer characterization must include the collection of relatively undisturbed continuous core samples from the surface to a depth at least equal to the bottom of the well screen. The recovered core length must be at least 90 percent of the total projected depth to the well screen, and each sampled interval must be a composite of no more than 2 feet in length. A well is eligible for removal credit if at least 90 percent of the composited intervals from the aquifer contain at least 10 percent fine grained material, which is defined as grains less than 1.0 mm in diameter.

(4) Wells constructed in partially consolidated granular aquifers are eligible for removal credit if approved by the State based on a demonstraton by the system that the aquifer provides sufficient natural filtration. The demonstration must include a characterization of the extent of cementation and fractures present in the aquifer.

(5) For vertical wells, the ground water flow path is the measured horizontal distance from the edge of the surface water body to the well. This horzontal distance to the surface water must be determined using the floodway boundary or 100 year flood elevation boundary as delineated on Federal Emergency Management Agency (FEMA) Flood Insurance Rate maps. If the floodway boundary or 100 year flood elevation boundary is not delineated, systems must determine the floodway or 100 year flood elevation boundary using methods substantially equilvalent to those used in preparing FEMA Flood Insurance Rate maps. For horizontal wells, the ground water flow path is the closest measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral intake.

(6) Turbidity measurements must be performed on representative samples from each wellhead at least every four hours that the bank filtration is in operation. Continuous turbidity monitoring at each wellhead may be used if the system validates the continuous measurement for accuracy on a regular basis using a protocol approved by the State. If the monthly average of daily maximum turbidity values at any well exceeds 1 NTU, the system must report this finding to the State within 30 days. In addition, within 30 days of the exceedance, the system must conduct an assessment to determine the cause of the high turbidity levels and submit that assessment to the State for a determination of whether any previously allowed credit is still appropriate.

(7) Systems with bank filtration that serves as pretreatment to a filtration plant and that exists when the system is required to conduct monitoring under § 141.702(a) may not claim this credit. During periods when the bank filtration is in use, systems must collect samples after the bank filtration for the purpose of determining bin classification under § 141.709.

§ 141.727 Treatment performance toolbox components.

(a) *Combined filter performance.* Systems using conventional filtration treatment or direct filtration treatment may claim an additional 0.5 log *Cryptosporidium* removal credit for any month at each plant that demonstrates that combined filter effluent (CFE) turbidity levels are less than or equal to 0.15 NTU in at least 95 percent of the measurements taken each month, based on sample measurements collected under § § 141.73,141.173(a) and 141.551. Systems may not claim credit under this paragraph and paragraph (b) in the same month.

(b) *Individual filter performance.* Systems using conventional filtration treatment or direct filtration treatment

may claim an additional 1.0 log *Cryptosporidium* removal credit for any month at each plant that meets both the individual filter effluent (IFE) turbidity requirements of paragraphs (b)(1) and (2) of this section, based on monitoring conducted under § § 141.174(a) and 141.560.

(1) IFE turbidity must be less than 0.1 NTU in at least 95% of the maximum daily values recorded at each filter in each month, excluding the 15 minute period following return to service from a filter backwash.

(2) No individual filter may have a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

(c)(1) *Demonstration of performance.* Systems may demonstrate to the State, through the use of State-approved protocols, that a plant, or unit process of a plant, achieves a mean *Cryptosporidium* removal efficiency greater than any presumptive credit specified under § 141.720 or § § 141.725 through 141.728. Systems are eligible for an increased *Cryptosporidium* removal credit if the State determines that the plant or process can reliably achieve such a removal efficiency on a continuing basis and the State provides written notification of its determination to the system. States may establish ongoing monitoring and/or performance requirements the State determines are necessary to demonstrate the greater credit and may require the system to report operational data on a monthly basis to verify that conditions under which the demonstration of performance was awarded are maintained during routine operations. If the State determines that a plant, or unit process of a plant, achieves an average *Cryptosporidium* removal efficiency less than any presumptive credit specified under § 141.720 or § § 141.725 through 141.728, the State may assign the lower credit to the plant or unit process.

(2) Systems may not claim presumptive credit for any toolbox box component in § § 141.726, 141.727(a) and (b), or 141.728 if that component is also included in the demonstration of performance credit.

§ 141.728 Additional filtration toolbox components.

(a) *Bag and cartridge filters.* Systems are eligible for a 1 log *Cryptosporidium* removal credit for bag filters and a 2 log *Cryptosporidium* removal credit for cartridge filters by meeting the criteria in paragraphs (a)(1) through (a)(10) of this section. The request to the State for this credit must include the results of challenge testing that meets the requirements of paragraphs (a)(2) through (a)(9) of this section.

(1) To receive a 1 log *Cryptosporidium* removal credit for a bag filter, the filter must demonstrate a removal efficiency of 2 log or greater for *Cryptosporidium*. To receive a 2 log *Cryptosporidium* removal credit for a cartridge filter, the filter must demonstrate a removal efficiency of 3 log or greater for *Cryptosporidium*. Removal efficiency must be demonstrated through challenge testing conducted according to the criteria in paragraphs (a)(2) through (a)(9) of this section. The State may accept data from challenge testing conducted prior to [Date of Publication of Final Rule in the **Federal Register**] in lieu of additional testing if the prior testing was consistent with the criteria specified in paragraphs (a)(2) through (a)(9) of this section.

(2) Challenge testing must be performed on full-scale bag or cartridge filters that are identical in material and construction to the filters proposed for use in full-scale treatment facilities for removal of *Cryptosporidium*.

(3) Challenge testing must be conducted using *Cryptosporidium* oocysts or a surrogate that is removed no more efficiently than *Cryptosporidium* oocysts. The organism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discreetly quantifying the specific organism or surrogate used in the test; gross measurements such as turbidity may not be used.

(4) The maximum feed water concentration that can be used during a challenge test must be based on the detection limit of the challenge particulate in the filtrate (*i.e.*, filtrate detection limit) and must be calculated using the equation in either paragraph (a)(4)(i) or (a)(4)(ii) of this section as applicable.

(i) For cartridge filters: Maximum Feed Concentration = $3.16\times10^4 \times$ (Filtrate Detection Limit).

(ii) For bag filters: Maximum Feed Concentration = $3.16\times10^3 \times$ (Filtrate Detection Limit).

(5) Challenge testing must be conducted at the maximum design flow rate for the filter as specified by the manufacturer.

(6) Each filter evaluated must be tested for a duration sufficient to reach 100 percent of the terminal pressure drop, which establishes the maximum pressure drop under which the filter may be used to comply with the requirements of this subpart.

(7) Each filter evaluated must be challenged with the challenge particulate during three periods over the filtration cycle: within two hours of start-up after a new bag or cartridge filter has been installed; when the pressure drop is between 45 and 55 percent of the terminal pressure drop; and at the end of the run after the pressure drop has reached 100 percent of the terminal pressure drop.

(8) Removal efficiency of a bag or cartridge filter must be determined from the results of the challenge test and expressed in terms of log removal values using the following equation:

$$LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$$

where LRV = log removal value demonstrated during challenge testing; C_f = the feed concentration used during the challenge test; and C_p = the filtrate concentration observed during the challenge test. In applying this equation, the same units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term C_p must be set equal to the detection limit. An LRV must be calculated for each filter evaluated during the testing.

(9) If fewer than 20 filters are tested, the removal efficiency for the filtration device must be set equal to the lowest of the representative LRVs among the filters tested. If 20 or more filters are tested, then removal efficiency of the filtration device must be set equal to the 10th percentile of the representative LRVs among the various filters tested. The percentile is defined by (i/(n+1)) where i is the rank of n individual data points ordered lowest to highest. If necessary, the system may calculate the 10th percentile using linear interpolation.

(10) If a previously tested bag or cartidge filter is modified in a manner that could change the removal efficiency of the filter, addition challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and submitted to the State.

(b) *Membrane filtration.* (1) Systems using a membrane filtration process, including a membrane cartridge filter that meets the definition of membrane filtration and the integrity testing requirements of this subpart, are eligible for a *Cryptosporidium* removal credit equal to the lower value of paragraph (b)(1)(i) or (b)(1) (ii) of this section:

(i) The removal efficiency demonstrated during challenge testing conducted under the conditions in paragraph (b)(2) of this section.

(ii) The maximum removal efficiency that can be verified through direct integrity testing used with the

membrane filtration process under the conditions in paragraph (b)(3) of this section.

(2) *Challenge Testing.* The membrane used by the system must undergo challenge testing to evaluate removal efficiency, and the system must submit the results of challenge testing to the State. Challenge testing must be conducted according to the criteria in paragraphs (b)(2)(i) through (b)(2)(vii) of this section. The State may accept data from challenge testing conducted prior to [Date of Publication of Final Rule in the **Federal Register**] in lieu of additional testing if the prior testing was consistent with the criteria in paragraphs (b)(2)(i) through (b)(2) (vii) of this section.

(i) Challenge testing must be conducted on either a full-scale membrane module, identical in material and construction to the membrane modules used in the system's treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module.

(ii) Challenge testing must be conducted using *Cryptosporidium* oocysts or a surrogate that is removed no more efficiently than *Cryptosporidium* oocysts. The organism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity may not be used.

(iii) The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and must be determined according to the following equation:

$$\text{Maximum Feed Concentration} = 3.16\times10^{6} \times (\text{Filtrate Detection Limit})$$

(iv) Challenge testing must be conducted under representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacture for the membrane module. Flux is defined as the rate of flow per unit of membrane area. Recovery is defined as the ratio of filtrate volume produced by a membrane to feed water volume applied to a membrane over the course of an uninterrupted operating cycle. An operating cycle is bounded by two consecutive backwash or cleaning events. For the purpose of challenge testing in this section, recovery does not consider losses that occur due to the use of filtrate in backwashing or cleaning operations.

(v) Removal efficiency of a membrane module during challenge testing must be determined as a log removal using the following equation:

$$LRV = LOG_{10}(C_f) - LOG_{10}(C_p)$$

where LRV = log removal value demonstrated during challenge testing; C_f = the feed concentration used during the challenge test; and C_p = the filtrate concentration observed during the challenge test. Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term C_p is set equal to the detection limit. An LRV must be calculated for each membrane module evaluated during the test.

(vi) The removal efficiency of a membrane filtration process demonstrated during challenge testing must be expressed as a log removal value ($LRV_{C\text{-}Test}$). If fewer than 20 modules are tested, then $LRV_{C\text{-}Test}$ is equal to the lowest of the representative LRVs among the applicable modules tested. If 20 or more modules are tested, then $LRV_{C\text{-}Test}$ is equal to the 10th percentile of the representative LRVs among the applicable modules tested. The percentile is defined by (i/(n+1)) where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(vii) The challenge test must establish a quality control release value (QCRV) for a non-destructive performance test that demonstrates the *Cryptosporidium* removal capability of the membrane filtration process. This performance test must be applied to each production membrane module used by the system that did not undergo a challenge test in order to verify *Cryptosporidium* removal capability. Production modules that do not meet the established QCRV are not eligible for the removal credit demonstrated during the challenge test.

(viii) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the non-destructive performance test and associated QCRV, addition challenge testing to demonstrate the removal efficiency of, and determine a new QCRV for, the modified membrane must be conducted and submitted to the State.

(3) *Direct integrity testing.* Systems must conduct direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process and meets the requirements described in paragraphs (b)(3)(i) through (b)(3)(vi) of this section.

(i) The direct integrity test must be independently applied to each membrane unit in service. A membrane unit is a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or maintenance.

(ii) The direct integrity method must have a resolution of 3 μm or less, where resolution is defined as the smallest leak size that contributes to a response from the direct integrity test.

(iii) The system must demonstrate that the direct integrity test can verify the log removal credit awarded to the membrane filtration process by the State using the approach in either paragraph (b)(2)(iii)(A) or (b)(2)(iii)(B) of this section as applicable based on the type of direct integrity test.

(A) For direct integrity tests that use an applied pressure or vacuum, the maximum log removal value that can be verified by the test must be calculated according to the following equation:

$$LRV_{DIT} = LOG_{10}(Q_p / (VCF \times Q_{breach}))$$

where LRV_{DIT} = maximum log removal value that can be verified by a direct integrity test; Q_p = total design filtrate flow from the membrane unit; Q_{breach} = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured, and VCF = volumetric concentration factor. The volumetric concentration factor is the ratio of the suspended solids concentration on the high pressure side of the membrane relative to that in the feed water.

(B) For direct integrity tests that use a particulate or molecular marker, the maximum log removal value that can be verified by the test must be calculated according to the following equation:

$$LRV_{DIT} = LOG_{10}(C_f) - LOG_{10}(C_p)$$

where LRV_{DIT} = maximum log removal value that can be verified by a direct integrity test; C_f = the typical feed concentration of the marker used in the test; and C_p = the filtrate concentration of the marker from an integral membrane unit.

(iv) Systems must establish a control limit for the direct integrity test that is indicative of an integral membrane unit capable of meeting the removal credit awarded by the State.

(v) If the result of a direct integrity test is outside the control limit established under paragraphs (b)(3)(i) through (b)(3)(iv) of this section, the membrane unit must be removed from service. A direct integrity test must be

conducted to verify any repairs, and the membrane unit may be returned to service only if the direct integrity test is within the established control limit.

(vi) Direct integrity testing must be conducted on each membrane unit at a frequency of not less than once each day that the membrane unit is in operation.

(4) *Indirect integrity monitoring.* Systems must conduct continuous indirect integrity monitoring on each membrane unit according to the criteria in paragraphs (b)(4)(i) through (b)(4)(v) of this section. A system that implements continuous direct integrity testing of membrane units in accordance with the criteria in paragraphs (b)(3)(i) through (b)(3)(v) of this section is not subject to the requirements for continuous indirect integrity monitoring.

(i) Unless the State approves an alternative parameter, continuous indirect integrity monitoring must include continuous filtrate turbidity monitoring.

(ii) Continuous monitoring must be conducted at a frequency of no less than once every 15 minutes.

(iii) Continuous monitoring must be separately conducted on each membrane unit.

(iv) If indirect integrity monitoring includes turbidity and if the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (*i.e.*, two consecutive 15-minute readings above 0.15 NTU), direct integrity testing must be performed on the associated membrane units as specified in paragraphs (b)(3)(i) through (b)(3)(v) of this section.

(v) If indirect integrity monitoring includes a State-approved alternative parameter and if the alternative parameter exceeds a State-approved control limit for a period greater than 15 minutes, direct integrity testing must be performed on the associated membrane units as specified in paragraphs (b)(3)(i) through (b)(3)(v) of this section.

(c) *Second stage filtration.* Systems are eligible for an additional 0.5 log *Cryptosporidium* removal credit if they have a separate second stage filtration process consisting of rapid sand, dual media, GAC, or other fine grain media in a separate stage following rapid sand or dual media filtration. To be eligible for this credit, the first stage of filtration must be preceded by a coagulation step and both filtration stages must treat 100% of the flow. A cap, such as GAC, on a single stage of filtration is not eligible for this credit.

(d) *Slow sand filtration.* Systems may claim a 2.5 log *Cryptosporidium* removal credit for a slow sand filtration process that follows another separate filtration process if all the flow is treated by both processes and no disinfectant residual is present in the influent water to the slow sand filtration process.

§ 141.729 Inactivation toolbox components.

(a) *Calculation of CT values.* (1) CT is the product of the disinfectant contact time (T, in minutes) and disinfectant concentration (C, in milligrams per liter). Systems must calculate CT at least once each day, with both C and T measured during peak hourly flow as specified in §§ 141.74(a) and 141.74(b).

(2) Systems with several disinfection segments (a segment is defined as a treatment unit process with a measurable disinfectant residual level and a liquid volume) in sequence along the treatment train, may calculate the CT for each disinfection segment and use the sum of the *Cryptosporidium* log inactivation values achieved through the plant.

(b) *CT values for chlorine dioxide.* (1) Systems using chlorine dioxide must calculate CT in accordance with § 141.729(a).

(2) Unless the State approves alternative CT values for a system under paragraph (b)(3) of this section, systems must use the following table to determine *Cryptosporidium* log inactivation credit:

CT VALUES FOR *Cryptosporidium* INACTIVATION BY CHLORINE DIOXIDE

Log credit	Water Temperature, °C [1]									
	<=0.5	1	2	3	5	7	10	15	20	25
0.5	319	305	279	256	214	180	138	89	58	38
1.0	637	610	558	511	429	360	277	179	116	75
1.5	956	915	838	767	643	539	415	268	174	113
2.0	1275	1220	1117	1023	858	719	553	357	232	150
2.5	1594	1525	1396	1278	1072	899	691	447	289	188
3.0	1912	1830	1675	1534	1286	1079	830	536	347	226

[1] CT values between the indicated temperatures may be determined by interpolation.

(3) Systems may conduct a site-specific inactivation study to determine the CT values necessary to meet a specified *Cryptosporidium* log inactivation level, using a State-approved protocol. The alternative CT values determined from the site-specific study and the method of calculation must be approved by the State.

(c) *CT values for ozone.* (1) Systems using ozone must calculate CT in accordance with § 141.729(a).

(2) Unless the State approves alternative CT values for a system under paragraph (c)(3) of this section, systems must use the following table to determine *Cryptosporidium* log inactivation credit:

CT VALUES FOR *Cryptosporidium* INACTIVATION BY OZONE

Log credit	Water Temperature, °C1 [1]									
	<=0.5	1	2	3	5	7	10	15	20	25
0.5	12	12	10	9.5	7.9	6.5	4.9	3.1	2.0	1.2
1.0	24	23	21	19	16	13	9.9	6.2	3.9	2.5
1.5	36	35	31	29	24	20	15	9.3	5.9	3.7
2.0	48	46	42	38	32	26	20	12	7.8	4.9
2.5	60	58	52	48	40	33	25	16	9.8	6.2

CT VALUES FOR *Cryptosporidium* INACTIVATION BY OZONE—Continued

Log credit	Water Temperature, °C1 [1]									
	<=0.5	1	2	3	5	7	10	15	20	25
3.0	72	69	63	57	47	39	30	19	12	7.4

[1] CT values between the indicated temperatures may be determined by interpolation

(3) Systems may conduct a site-specific inactivation study to determine the CT values necessary to meet a specified *Cryptosporidium* log inactivation level, using a State-approved protocol. The alternative CT values determined from the site-specific study and the method of calculation must be approved by the State.

(d) *Ultraviolet light.* (1) Systems may claim credit for ultraviolet (UV) processes for inactivation of *Cryptosporidium*, *Giardia lamblia*, and viruses. The allowable inactivation credit for each pathogen must be based on the UV dose delivered by the system's UV reactors in relation to the UV dose table in paragraph (d)(2) of this section.

(2) *UV dose table.* The log credits given in this UV dose table are for UV light at a wavelength of 254 nm as produced by a low pressure mercury vapor lamp. Systems may apply this table to UV reactors with other lamp types through reactor validation testing (*i.e.*, performance demonstration) as described in paragraph (d)(3) of this section. The UV dose values in this table are applicable only to post-filter application of UV in systems that filter under subpart H of this part and to unfiltered systems meeting the filtration avoidance criteria in subparts H, P, and T of this part:

UV DOSE TABLE FOR *Cryptosporidium*, GIARDIA LAMBLIA, AND VIRUS INACTIVATION CREDIT

Log credit	*Cryptosporidium* UV Dose (mJ/cm [2])	*Giardia lamblia* UV dose (mJ/cm [2])	Virus UV dose (mJ/cm [2])
0.5	1.6	1.5	39
1.0	2.5	2.1	58
1.5	3.9	3.0	79
2.0	5.8	5.2	100
2.5	8.5	7.7	121
3.0	12	11	143
3.5	NA	NA	163
4.0	NA	NA	186

(3) *Reactor validation testing.* For a system to receive inactivation credit for a UV reactor, the reactor must undergo the validation testing in paragraphs (d)(3)(i) and (d)(3)(ii) of this section, unless the State approves an alternative approach. The validation testing must demonstrate the operating conditions under which the reactor can deliver the UV dose required in paragraph (d)(2) of this section.

(i) Validation testing of UV reactors must determine a range of operating conditions that can be monitored by the system and under which the reactor delivers the required UV dose. At a minimum, these operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status. The validated operating conditions determined by this testing must account for the following: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical system components; and inlet and outlet piping or channel configurations of the UV reactor.

(ii) Validation testing must include the following: full scale testing of a reactor that conforms uniformly to the UV reactors used by the system; and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp.

(4) *Reactor monitoring.* Systems must monitor their UV reactors to demonstrate that they are operating within the range of conditions that were validated by the testing described in paragraphs (d)(3)(i) and (d)(3)(ii) of this section to achieve the required UV dose in paragraph (d)(2) of this section. Systems must monitor for UV intensity as measured by a UV sensor, flow rate, and lamp outage and for any other parameters required by the State. Systems must verify the calibration of UV sensors and must recalibrate sensors in accordance with a protocol approved by the State.

Reporting and Recordkeeping Requirements

§ 141.730 Reporting requirements.

(a) Systems must follow the requirements for reporting sampling schedules under § 141.703 and for reporting source water monitoring results under § 141.707 unless they notify the State that they will not conduct source water monitoring due to meeting the criteria of § 141.701(f) or (g).

(b) Systems using uncovered finished water storage facilities must notify the State of the use of each facility no later than [Date 24 Months After Date of Publication of Final Rule in the **Federal Register**].

(c) Filtered systems and unfiltered systems that are required to install filtration must report their *Cryptosporidium* bin classification, as determined under using the procedures in § 141.709, to the State by the applicable dates in paragraph (c)(1) or (2) of this section.

(1) Systems that serve at least 10,000 people must report their initial bin classification no later than [Date 36 Months After Date of Publication of Final Rule in the **Federal Register**] and must report their bin classification determined using results from the second round of source water monitoring no later than [Date 138 Months After Date of Publication of Final Rule in the **Federal Register**].

(2) Systems that serve fewer than 10,000 people must report their initial bin classification no later than [Date 66 Months After Date of Publication of Final Rule in the **Federal Register**] and must report their bin classification determined using results from the second round of source water monitoring no later than [Date 174 Months After Date of Publication of Final Rule in the **Federal Register**].

(d) Unfiltered systems that meet all filtration avoidance criteria of § 141.71 must report their mean *Cryptosporidium* concentration, as determined under § 141.721, to the State by the applicable dates in paragraph (d)(1) or (2) of this section.

(1) Systems that serve at least 10,000 people must report their initial mean *Cryptosporidium* concentration no later than [Date 36 Months After Date of Publication of Final Rule in the **Federal Register**] and must report their mean *Cryptosporidium* concentration determined using results from the second round of source water monitoring no later than [Date 138 Months After Date of Publication of Final Rule in the **Federal Register**].

(2) Systems that serve fewer than 10,000 people must report their initial mean *Cryptosporidium* concentration no later than [Date 66 Months After Date of Publication of Final Rule in the **Federal Register**] and must report their mean *Cryptosporidium* concentration determined using results from the second round of source water monitoring no later than [Date 174 Months After Date of Publication of Final Rule in the **Federal Register**].

(e) Systems must report to the State in accordance with the following table in this paragraph for any toolbox options used to comply with the *Cryptosporidium* treatment technique requirements under § 141.720 or § 141.721. The State may place additional reporting requirements it determines to be necessary to verify operation in accordance with required criteria for all toolbox options:

MICROBIAL TOOLBOX REPORTING REQUIREMENTS

Toolbox option	Systems must submit the following information	On the following schedule[1]—systems serving ≥ 10,000 people	On the following schedule[1]—systems serving < 10,000 people
(1) Watershed control program (WCP).	(i) Notify State of intention to develop WCP.	No later than [Date 48 Months After Date of Publication of Final Rule in the **Federal Register**].	No later than [Date 78 Months After Date of Publication of Final Rule in the **Federal Register**].
	(ii) Submit initial WCP plan to State.	No later than [Date 60 Months After Date of Publication of Final Rule in the **Federal Register**].	No later than [Date 90 Months After Date of Publication of Final Rule in the **Federal Register**].
	(iii) Annual report and State-approved watershed survey report.	By a date determined by the State, every 12 months, beginning on [Date 84 Months After Date of Publication of Final Rule in the **Federal Register**].	By a date determined by the State, every 12 months, beginning on [Date 114 Months After Date of Publication of Final Rule in the **Federal Register**].
	(iv) Request for re-approval and report on the previous approval period.	Six months prior to the end of the current approval period or by a date previously determined by the State.	Six months prior to the end of the current approval period or by a date previously determined by the State.
(2) Bank filtration	(i) Initial demonstration of the following: unconsolidated, predominantly sandy aquifer and setback distance of at least 25 ft. (0.5 log credit) or 50 ft. (1.0 log credit).	Initial demonstration no later than [Date 72 Months after Date of Publication of Final Rule in the **Federal Register**].	Initial demonstration no later than [Date 102 Months after Date of Publication of Final Rule in the **Federal Register**].
	(ii) If monthly average of daily max turbidity is greater than 1 NTU then system must report result and submit an assessment of the cause.	Report within 30 days following the month in which the monitoring was conducted, beginning on [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Report within 30 days following the month in which the monitoring was conducted, beginning on [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
(3) Presedimentation	Monthly verification of the following; Continuous basin operation; treatment of 100% of the flow; continuous addition of a coagulant; and at least 0.5 log removal of influent turbidity based on the monthly mean of daily turbidity readings for 11 of the 12 previous months.	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
(4) Two-sage lime softening	Monthly verification of the following: Continuous operation of a second clarification step between the primary clarifier and filter; continuous presence of a coagulant in both primary and secondary clarifiers; and both clarifiers treated 100% of the plant flow.	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].

MICROBIAL TOOLBOX REPORTING REQUIREMENTS—Continued

Toolbox option	Systems must submit the following information	On the following schedule[1]—systems serving ≥ 10,000 people	On the following schedule[1]—systems serving < 10,000 people
(5) Combined filter performance	Monthly verification of combined filter effluent (CFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of the 4 hour CFE measurements taken each month.	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
(6) Individual filter performance	Monthly verification of the following: Individual filter effluent (IFE) turbidity levels less than or equal to 0.1 NTU in at least 95 percent of all daily maximum IFE measurements taken each month (excluding 15 min period following start-up after backwash); and no individual filter greater than 0.3 NTU in two consecutive readings 15 minutes apart.	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
(7) Membrane filtration	(i) Results of verification testing demonstrating the following: Removal efficiency established through challenge testing that meets criteria in this subpart; and integrity testing and associated baseline.	No later than [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	No later than [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
	(ii) Monthly report summarizing all direct integrity tests above the control limit and, if applicable, any indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken.	Within 10 days following the month in which monitoring was conducted, beginning [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Within 10 days following the month in which monitoring was conducted, beginning [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
(8) Bag filters and cartridge filters	(i) Demonstration that the following criteria are met: process meets the definition of bag or cartridge filtration; removal efficiency established through challenge testing that meets criteria in this subpart; and challenge test shows at least 2 log removal for bag filters and 3 log removal for cartridge filters.	No later than [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	No later than [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
	(ii) Monthly verification that 100% of flow was filtered.	Within 10 days following the month in which monitoring was conducted, beginning [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Within 10 days following the month in which monitoring was conducted, beginning [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
(9) Second stage filtration	Monthly verification that 100% of flow was filtered through both stages.	Within 10 days following the month in which monitoring was conducted, beginning [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Within 10 days following the month in which monitoring was conducted, beginning [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
(10) Slow and filtration	Monthly verification that 100% of flow was filtered.	Within 10 days following the month in which monitoring was conducted, beginning [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Within 10 days following the month in which monitoring was conducted, beginning [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
(11) Chlorine dioxide	Summary of CT values for each day based on Table in § 141.729(b).	Within 10 days following the month in which monitoring was conducted, beginning [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Within 10 days following the month in which monitoring was conducted, beginning [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].

MICROBIAL TOOLBOX REPORTING REQUIREMENTS—Continued

Toolbox option	Systems must submit the following information	On the following schedule[1]—systems serving ≥ 10,000 people	On the following schedule[1]—systems serving < 10,000 people
(12) Ozone	Summary of CT values for each day based on Table in § 141.729(c).	Within 10 days following the month in which monitoring was conducted, beginning [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Within 10 days following the month in which monitoring was conducted, beginning [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
(13) UV	(i) Validation test results demonstrating operating conditions that achieve required UV dose.	No later than [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	No later than [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
	(ii) Monthly report summarizing the percentage of water entering the distribution system that was not treated by UV reactors operating within validated conditions for the required dose as specified in § 141.729(d).	Within 10 days following the month in which monitoring was conducted, beginning [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Within 10 days following the month in which monitoring was conducted, beginning [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
(14) Demonstration of performance	(i) Results from testing following a State approved protocol.	No later than [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	No later than [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].
	(ii) As required by the State, monthly verification of operation within conditions of State approval for demonstration of performance credit.	Within 10 days following the month in which monitoring was conducted, beginning [Date 72 Months After Date of Publication of Final Rule in the **Federal Register**].	Within 10 days following the month in which monitoring was conducted, beginning [Date 102 Months After Date of Publication of Final Rule in the **Federal Register**].

[1] States may allow up to an additional two years to the date when the first submittal must be completed for systems making capital improvements.

(f) Systems must report to the State the information associated with disinfection profiling and benchmarking requirements of §§ 141.711 to 141.714 in accordance with the tables in this paragraph.

TABLE 1.—DISINFECTION PROFILING REPORTING REQUIREMENTS FOR LARGE SYSTEMS

[Serving ≥10,000 people]

System type	Benchmark component	Submit the following items	On the following schedule
(1) Systems required to conduct *Cyrptosporidium* monitoring.	(i) Characterization of disinfection practices. See § 141.713.	*Giardia lamblia* and virus inactivation profiles must be on file for State review during sanitary survey.	No later than [Date 36 Months After Date of Publication of Final Rule in the **Federal Register**].
	(ii) State review of proposed significant changes to disinfection practice. See § 141.714.	Inactivation profile and benchmark determinations.	Prior to significant modification of disinfection practice.
(2) Systems not required to conduct *Cryptosporidium* monitoring[a].	(i) Applicability	None	None.
	(ii) Characterization of Disinfection Practices.	None	None.
	(iii) State Review of Proposed Changes to Disinfection Practices.	None	None.

[a] Systems that provide at least 5.5 log of *Cryptosporidium* treatment, consistent with a Bin 4 treatment requirement, are not required to conduct *Cryptosporidium* monitoring.

TABLE 2.—DISINFECTION PROFILING REPORTING REQUIREMENTS FOR SMALL SYSTEMS

[Serving < 10,000 people]

System type	Benchmark component	Submit the following items	On the following schedule
(1) Systems required to conduct *Cryptosporidium* monitoring.	(i) Characterization of disinfection practices. See § 141.713.	*Giardia lamblia* and virus disinfection profiles must be on file for State review during sanitary survey.	No later than [Date 66 Months After Date of Publication of Final Rule in the **Federal Register**].

TABLE 2.—DISINFECTION PROFILING REPORTING REQUIREMENTS FOR SMALL SYSTEMS—Continued

[Serving < 10,000 people]

System type	Benchmark component	Submit the following items	On the following schedule
	(ii) State review of proposed significant changes to disinfection practices. See § 141.714.	Disinfection profiles and benchmark determinations.	Prior to significant modification of disinfection practice.
(2) Systems not required to conduct *Cryptosporidium* monitoring and that exceed DBP triggers [a,b,c].	(i) Determination of requirement to profile. See § 141.711(b).	Report on TTHM and HAA5 LRAA values from monitoring under subpart L.	No later than [Date 42 Months After Date of Publication of Final Rule in the **Federal Register**].
	(ii) Characterization of disinfection practices. See § 141.713.	*Giardia lambia* and virus disinfection profiles must be on file for State review during sanitary survey.	No later than [Date 54 Months after Date of Publication of Final Rule in the **Federal Register**].
	(iii) State review of proposed significant changes to disinfection practices. See § 141.714.	Disinfection profiles and benchmark determinations.	Prior to significant modification of disinfection practice.
(3) Systems not required to conduct *Cryptosporidium* monitoring and that do not exceed DBP triggers [b,c].	(i) Determination of no requirement to profile. See § 141.711(b).	Report on TTHM and HAA5 LRAA values from monitoring under subpart L.	No later than [Date 42 Months After Date of Publication of Final Rule in the **Federal Register**].
	(ii) Characterization of disinfection practices. See § 141.713.	None	None.
	(iii) State review of proposed significant changes to disinfection practice. See § 141.714.	None	None.

[a] Systems that provide at least 5.5 log of *Cryptosporidium* treatment, consistent with a Bin 4 treatment requirement, are not required to conduct *Cryptosporidium* monitoring.
[b] See § 141.702(b) to determine if *Cryptosporidium* monitoring is required.
[c] See § 141.711(b) to determine if disinfection profiling is required based on TTHM or HAA5 LRAA.

§ 141.731 Recordkeeping requirements.

(a) Systems must keep results from monitoring required under § 141.702 until 36 months after all source water monitoring required under this section has been completed.

(b) Systems must keep a record of any notification to the State that they will not conduct source water monitoring due to meeting the criteria of § 141.701(f) or (g).

(c) Systems required to develop disinfection profiles under § 141.711 must keep disinfection profiles on file for State review during sanitary surveys.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

5. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9 and 300j–11.

6. Section 142.14 is amended by adding paragraphs (a)(8) and (a)(9) to read as follows:

§ 142.14 Records kept by States.

* * * * *

(a) * * *

(8) [Reserved]

(9) Any decisions made pursuant to the provisions of part 141, subpart W of this chapter.

(i) Results of source water *E. coli* and *Cryptosporidium* monitoring.

(ii) Initial bin classification for each system that currently provides filtration or that is unfiltered and required to install filtration, along with any change in bin classification due to watershed assessment during sanitary surveys or the second round of source water monitoring.

(iii) A determination of whether each system that is unfiltered and meets all the filtration avoidance criteria of § 141.71 of this chapter has a mean source water *Cryptosporidium* level above 0.01 oocysts/L, along with any changes in this determination due to the second round of source water monitoring.

(iv) The treatment or control measures that systems use to meet their *Cryptosporidium* treatment requirements under § 141.720 or § 141.721 of this section.

(v) A list of systems required to cover or treat the effluent of an uncovered finished water reservoir.

(vi) A list of systems for which the State has waived the requirement to cover or treat the effluent of uncovered finished water storage facilities and supporting documentation of the risk mitigation plan.

* * * * *

7. Section 142.15 is amended by adding paragraph (c)(6) to read as follows:

§ 142.15 Reports by States.

(c) * * *

(6) *Subpart W.* (i) The initial bin classification for each system that currently provides filtration or that is unfiltered and required to install filtration, along with any change in bin classification due to watershed assessment during sanitary surveys or the second round of source water monitoring.

(ii) A determination of whether each system that is unfiltered and meets all the filtration avoidance criteria of § 141.71 of this chapter has a mean source water *Cryptosporidium* level above 0.01 oocysts/L, along with any changes in this determination due to the second round of source water monitoring.

* * * * *

8. Section 142.16 is amended by adding paragraphs (m) and (n) to read as follows:

§ 142.16 Special primacy conditions.

* * * * *

(m) [Reserved]

(n) *Requirements for States to adopt 40 CFR part 141, subpart W.* In addition to the general primacy requirements elsewhere in this part, including the requirements that State regulations be at least as stringent as federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart W,

must contain a description of how the State will accomplish the following program requirements where allowed in State programs.

(1) Assess significant changes in the watershed and source water as part of the sanitary survey process and determine appropriate follow-up action.

(2) Approve watershed control programs for the 0.5 log watershed control program credit in the microbial toolbox.

(3) Approval protocols for treatment credits under the Demonstration of Performance toolbox option and for alternative ozone and chlorine dioxide CT values.

(4) Determine that a system with an uncovered finished water reservoir has a risk mitigation plan that is adequate for purposes of waiving the requirement to cover or treat the reservoir.

[FR Doc. 03–18295 Filed 8–8–03; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
August 11, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 119

Reports by Carriers on Incidents Involving Animals During Air Transport; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 119

[Docket No. FAA–2002–13378; Amendment No. 119–9]

RIN 2120–AH69

Reports by Carriers on Incidents Involving Animals During Air Transport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements section 710 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) by requiring air carriers that provide scheduled passenger air transportation to submit monthly to the Secretary of Transportation, through the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), a report on any incidents involving the loss, injury or death of an animal during air transport provided by the air carrier.

DATES: The Office of Management and Budget has not approved the information collection contained in these requirements. These requirements do not become effective until after the FAA publishes a notice of the Office of Management and Budget's approval for this information collection.

FOR FURTHER INFORMATION CONTACT: James W. Whitlow, Office of the Chief Counsel, AGC–2, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3222; facsimile (202) 267–3227.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm,* or by e-mailing us at *9-AWA-SBREFA@faa.gov.*

Background

Section 710 of AIR–21 (Public Law 106–181) added section 41721 to chapter 417 of Title 29 U.S.C. Section 41721(b) mandates that air carriers report to the Secretary of Transportation on a monthly basis about any incidents involving the loss, injury or death of an animal during air transportation. Section 41721(c) directs the Secretary of Transportation and the Secretary of Agriculture to enter into a memorandum of understanding to ensure the sharing of the information contained in these reports. Section 41721(d) directs the Secretary of Transportation to publish data on incidents and complaints involving the loss, injury, or death of an animal during air transport in a manner comparable to other consumer complaint and incident data.

FAA published a notice of proposed rulemaking (NPRM) on September 27, 2002 (67 FR 61238) that proposed to comply with section 710 of AIR–21. On October 18, 2002, in response to requests that interested persons submitted to the docket, we extended the comment period to December 27, 2002 (67 FR 64330).

What the Final Rule Does

This final rule implements the rule proposed in the NPRM by amending 14 CFR part 119 to require air carriers that provide scheduled passenger air transportation to submit monthly reports on the loss, injury or death of an animal during air transport to the Secretary of Transportation, through APHIS. The rule specifies the type and manner of information that air carriers must submit to APHIS to comply with Section 41721(a). APHIS will process the reports and forward the relevant information to the Office of Aviation Enforcement and Proceedings (APE) for monthly publication in the Air Travel Consumer Report. The term ''animal'' is limited to an animal that is being kept as a pet in a family household in the United States.

Discussion of Comments

The FAA received approximately 3,760 comments in response to the NPRM. Most of the comments were similar. Of the comments supporting the action proposed in the NPRM, most of the comments urged the FAA to expand the reporting requirement to cover all animals that are transported by air, not just household pets of U.S. families. Those who opposed the proposed rule were typically concerned that the rule would increase shipping costs for animals or reduce the shipping options available, and that the definition of ''animal'' should be limited to animals being kept as a pet in a family household in the United States, but not include animals being transported for the purpose of being sold as a pet in a family household in the United States.

FAA Response:

Definition of ''Animal''

After reviewing the comments, the text of Section 710 and its legislative history, the FAA has concluded that the intent of the legislation was to require reporting of incidents involving pets presented by passengers to scheduled passenger air carriers for transport on commercial flights. This conclusion is consistent with the limitation of Section 41721(a) to ''[a]n air carrier that provides scheduled passenger air transportation'' and the fact that Section 41721(d) directs the Secretary of Transportation to publish data on the incidents ''in a manner comparable to other consumer complaint and incident data.'' (Emphasis added). The Conference Report for P. L. 106–181 indicates that Section 710 was adopted instead of the Senate amendment so that airlines could continue to carry animals while information is collected that Congress can use to determine whether there is a problem that warrants stronger legislative remedies. See House Report 106–513, page 197. In the meantime, Congress directed DOT:

> to work with airlines to improve the training of employees so that (1) they will be better able to ensure the safety of animals being

flown and (2) they will be better able to explain *to passengers the conditions under which their pets are being carried.* People should know that their *pets* might be in a cargo hold that may not be air-conditioned or may differ from the passenger cabin in other respects. (Emphasis added)
Id., page 198.

In consideration of the above, Section 119.72(c)(2) shall read:

''Animal means any warm or cold blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States.''

Cost of Shipping Animals by Air and Availability of Shipping Options

The reporting requirement was established by Congress in Section 710, not by FAA through implementation of this rule; therefore, the cost of compliance with the reporting requirement is the result of the statute, not this rule. More importantly, though, because the rule will only require reports to be filed when an incident occurs, and only with respect to the transportation of pets, the economic impact of this rule should be minimal, and will neither raise the cost of shipping animals by air nor affect the availability of shipping options.

Paperwork Reduction Act

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and the benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation without making a reasoned determination that the benefits of the intended regulation justify its costs. FAA's assessment of this rulemaking indicates that its economic impact is minimal. The reporting requirement was established by statute, not this rule; however, the cost of compliance will be minimal because the rule will require reports to be filed only after an incident occurs, and only with respect to the transportation of pets. Because the costs and benefits of this action do not make it a ''significant regulatory action'' as defined in the Order, FAA has not prepared a ''regulatory impact analysis.'' Similarly, FAA has not prepared a full ''regulatory evaluation,'' which is not required when the economic impact of a rule is minimal.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule (1) has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not create barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 602–612, directs Federal agencies to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdiction subject to the regulation. Federal agencies are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities'' as defined in the Act. If an agency finds that the action will have a significant impact, it must do a ''regulatory flexibility analysis.''

This final action imposes an insignificant reporting requirement on air carriers; therefore, FAA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the U.S.

In accordance with the above statute and policy, FAA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation in any one year by State, local, and tribal governments, in the aggregate,

or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. FAA has determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 119

Air Carrier, Animal Incidents, Reporting Requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 119—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

■ 1. The authority citation for part 119 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 2. Section 119.72 is added to subpart C to read as follows:

§ 119.72 Reports by air carriers on incidents involving animals during air transport.

(a) Any air carrier that provides scheduled passenger air transportation shall, within 15 days of the end of the month to which the information applies, submit to the Animal & Plant Health Inspection Service, United States Department of Agriculture, a report on any incidents involving the loss, injury, or death of an animal during air transport provided by the air carrier.

(b) The report shall be made in the form and manner set forth in reporting directives issued by the Animal & Plant Health Inspection Service, and shall contain the following information:

(1) Carrier and flight number;

(2) Date and time of the incident;

(3) Description of the animal, including name, if applicable;

(4) Identification of the owner(s) and/or guardian of the animal;

(5) Narrative description of the incident;

(6) Narrative description of the cause of the incident;

(7) Narrative description of any corrective action taken in response to the incident; and

(8) Name, title, address, and telephone number of the individual filing the report on behalf of the air carrier.

(c) For purposes of this section: (1) The air transport of an animal includes the entire period during which an animal is in the custody of an air carrier, from check-in of the animal prior to departure until the animal is returned to the owner or guardian of the animal at the final destination of the animal; and

(2) Animal means any warm or cold blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States.

Issued in Washington, DC, on August 4, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–20282 Filed 8–8–03; 8:45 am]

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Federal Register

Monday,
August 11, 2003

Part IV

Department of Agriculture

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 206

Swine Packer Marketing Contracts; Contract Library; Final Rule

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 206

[PSA–2000–01–b]

RIN 0580–AA71

Swine Packer Marketing Contracts; Contract Library

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: We are establishing regulations to implement a swine contract library as required by the Swine Packer Marketing Contracts subtitle of the Livestock Mandatory Reporting Act of 1999. The regulations specify how we will establish a library or catalog of contract types that packers use to purchase swine for slaughter and make information about the contract terms available to the public. The regulations also establish monthly reports on the estimated number of swine committed for delivery to packers under existing contracts.

DATES: *Effective Date:* September 10, 2003.

Compliance Dates:

1. Each packer's initial submission of example contracts representing existing and available contracts is due November 3, 2003.

2. Each packer's initial submission of monthly reports is due December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Stuart Frank, Supervisory Economist, USDA GIPSA, (515) 323–2579, Suite 317, 210 Walnut Street, Des Moines, IA 50309, or via e-mail at *SwineContractLibrary.Gipsa@usda.gov.*

SUPPLEMENTARY INFORMATION:

Congressional Mandate

Congress passed the Livestock Mandatory Reporting Act of 1999 [1] (LMRA), which includes requirements for mandatory price reporting by packers and requirements for reporting of certain information on the contract types used by packers for procurement of swine for slaughter. The LMRA also amended the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181–229) (P&S Act) to require the Secretary to establish and maintain a library or catalog of the contract types made available by certain packers to swine producers. The LMRA requires certain packers (specified below) to submit contracts to create the contract library. The amendment also requires the Secretary to make information concerning those contract types available to producers and other interested parties. Additionally, the Secretary is to obtain and report monthly information from certain packers concerning the estimated numbers of swine to be delivered under contractual arrangements for slaughter within the 6- and 12-month periods following each monthly report.

The LMRA also includes a section on the expiration of the authority granted by its provisions. Section 942 of the LMRA states that:

> The authority provided by this title and the amendments made by this title terminate 5 years after the date of the enactment of this Act.

The President signed the appropriations act for Agriculture and other agencies on October 22, 1999. Therefore, the LMRA and the related amendments to the P&S Act will expire on October 22, 2004.

This rule sets forth the Grain Inspection, Packers and Stockyards Administration (GIPSA) regulations to implement section 934 of the LMRA, which amended the P&S Act to require the Secretary to establish and maintain a library or catalog of the types of contracts offered by certain packers to swine producers. We are implementing the new sections of the P&S Act in regulations as new Part 206 of Title 9 of the Code of Federal Regulations (the regulations, 9 CFR 206). The regulations are described below.

This regulatory program is intended to meet the purposes of providing to producers, packers, and other market participants information that can be readily understood with respect to swine marketing contracts. By providing this information, the swine contract library reports are intended to provide more transparency about contract terms and equalize access to market information for all market participants.

Background

On September 5, 2000, we published a proposed rule [2] in the **Federal Register** (65 FR 53653–53679) to implement the swine contract library amendments to the P&S Act. In broad terms, the proposed regulatory program can be summarized as follows. The proposed rule contained three new regulatory sections that would appear in the Code of Federal Regulations at Part 206 of Title 9. The proposed first section, section 206.1, contained the definition of terms that would apply to the regulations. The definitions were, in the main, taken from the definitions in the LMRA. Proposed section 206.2, the contract library section of the regulations, required packers to file a copy of an example of each swine packer marketing contract currently in effect or available and an example of each new contract when it is offered. We proposed to publish a summary of contract terms from the example contracts that are available in each of five regions of the country and by contract type. Proposed section 206.3, the monthly report section, required packers to provide an estimate, by month, for the following 12 months, of the number of committed swine by the type of contract, as well as an estimate of the number of swine that could potentially be delivered if all existing expansion clauses in contracts are exercised. The information from the packer's monthly reports would be aggregated and reported by GIPSA on a regional basis. In the proposed rule, we indicated that both the summary of contract terms and the aggregated monthly report would be available on the Internet on the GIPSA Web site or at the GIPSA Regional Office in Des Moines, Iowa.

We received 11 comments during the 30-day comment period that ended on October 5, 2000. Along with reviewing the comments submitted, we reviewed the proposal to determine if changes should be made to make the final rule more clear and the reporting process more efficient. We will describe those changes and address the comments below.

Definition of ''Packer''

While developing the swine contract library regulations, we identified 11 small packers that purchase a small number of swine and have them slaughtered at plants that are large enough to make these small packers fit the definition of ''packer'' as contained in the proposed rule. As reported to us on packer annual reports, in 2000, these 11 packers had a combined total of 164,516 hogs slaughtered for them by other packers, with the individual amounts from each of the 11 packers ranging from 181 to 69,262 hogs. Most of these packers purchase hogs from the spot market and do not use contracts to purchase hogs for slaughter. These 11 packers are not comparable in size to

[1] Title IX of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 2000 (Pub. L. 106–78).

[2] Refer to the proposal for a detailed explanation of (1) the requirements of the LMRA for the implementation of the swine contract library and (2) our interpretation of the requirements.

the 33 packers [3] that we estimate would be required to report under the swine contract library. We do not anticipate that requiring small packers, such as these 11 packers, to report would add enough value to the information we report from the swine contract library to justify the anticipated burden on such small packers. We determined that it would be reasonable to exempt such small packers from the requirements of the swine contract library regulations. We revised the definition of packers in section 206.1 to apply to a packer purchasing at least 100,000 swine per year. We used 100,000 as the minimum for consistency with the legislative requirement for the average number of hogs that each plant slaughters. In comparing the purchases of these 11 small packers, in 2000, the maximum annual purchase was 69,262 hogs; as this packer increases its annual slaughter to 100,000, it will be required to report as required by the swine contract library regulations. Other changes to the definition included deleting the phrase ''or firm'' from the definition of packer, because the definition of person in the P&S Act includes individuals, partnerships, corporations, and associations making the use of the phrase ''or firm'' unnecessary, and deleting the word ''would'' from the definition of packer.

Text of the regulation as proposed	Text of the regulation as revised
Packer. Any person or firm engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part would only apply to a packer slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions: * * *	*Packer.* Any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part only apply to a packer purchasing at least 100,000 swine per year and slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions: * * *

Submission of Example Contracts

During the development of the swine contract library regulations, we identified the packers and the specific plants that currently meet the requirements of the regulations. The proposed rule did not specify how we will provide information about the swine contract library to those packers; when this rule is published, we will notify each of those packers, in writing, about the information that each packer will be required to provide, and provide a packer identification number, which we will assign. In addition to providing a copy of guidelines, forms, and instructions, the notification will provide information about the option of submitting information electronically.

Each of these packers will be required to submit example contracts for each plant at which it slaughters or has hogs slaughtered that meets the definition in this rule. Each packer will use the criteria established in this rule to determine which existing and available contracts can be represented by one example contract. The packer will submit as many example contracts as are necessary to represent all of its existing and available contracts at the time the initial submission is due.

As a new option, we developed guidelines that the packer may follow to submit example contracts and developed an option for the electronic submission of example contracts. The guidelines include an optional cover sheet for the identification of example contract submissions. The guidelines are intended to eliminate the confusion expressed by commenters about what needs to be submitted.

In the proposed rule, we proposed to have each packer sort its contracts into six contract type categories, identify the example contracts within each contract type category, and then submit the example contracts. Since the publication of the proposed rule, we realized that each packer could identify its example contracts without having to sort the contracts into the six contract type categories. We further realized that there would be greater consistency in the contracts placed into each category if we identified into which contract type category each example contract will be placed, which will relieve packers of the additional burden of sorting its contracts into the six categories. Therefore, packers do not need to sort contracts by category.

After we receive the example contracts, we will categorize the example contracts, using the six contract type categories established in this rule. We will notify the packer of the contract type category for each example contract submitted. The packer will need to know the contract type category to which each example contract is assigned to prepare the information required for the monthly reports. We will provide the packer with this information at least 2 weeks prior to the required submission of monthly reports. In the monthly reports that each packer will submit, the packer will report the estimated deliveries of hogs for all contracts; in the report, the packer will group the estimates by the contract type categories. We will use the contract type categories to summarize information from the example contracts and the monthly reports and to provide public reports. The public reports will be provided by contract type and geographic region. Information will only be released to the public if confidentiality requirements can be met.

In addition to the initial submission of existing and available contracts, as contracts are made available, revised, or expire, each packer should use the following guidelines to determine when another submission or notification of a change is required.

- Required submission of contract made available: When a contract that represents an example contract is made available to swine sellers, the packer will submit it to GIPSA as an example contract (for discussion purposes, we will call this Example contract A).
- Potential subsequent submission due to contract changes: When a contract changes, for example, the contract is made available and negotiations result in a new example contract, the packer will submit the new example contract to GIPSA and specify if it replaces the previously submitted example contract or if it is an additional new example contract (for discussion purposes, we will call this Example contract B). Example contracts would not be continuously submitted to GIPSA during negotiations; one would be submitted when it is made available to sellers and, when necessary, another

[3] Based on the 5 year average using the most recent data, which included 2002 slaughter data for federally inspected plants compiled by the National Agricultural Statistics Service, there are 33 packers that will be submitting contracts for 53 plants.

would be submitted when the negotiation resulted in a contract or when an existing contract changes.

—New additional example contract example: If the packer and the producer agree to a contract with a change, which results in a different example contract (Example contract B) and the packer continues to make Example contract A available to other producers, the negotiated contract will be submitted as a new example contract (Example contract B).

—Replacement example: If, however, in that scenario, the packer no longer makes the original Example contract A available to any other producer and Example contract A is no longer used, then the negotiated contract would be submitted as an example contract to replace the previously submitted Example contract A.

• Notification of example contracts that have expired or that have been withdrawn: When a previously submitted example contract no longer represents any existing contracts, the packer will notify us that the example contract has expired. When a previously submitted example contract did not result in any contracts between the packer and seller(s) and no longer represents any available contracts, the packer will notify us that the example contract was withdrawn.

The requirements for submitting example contracts and subsequent notifications apply to both written and verbal contracts. The packer will provide written documentation for example contracts that represent verbal contracts. The guidelines identify the information that packers should document for verbal contracts. As we stated in the proposed rule (65 FR 53659):

packers would be required to provide written descriptions of the terms of all agreements for the purchase of swine for slaughter for which the parties did not execute a document to signify the existence of the agreement. The packer would be required to provide all terms of a verbal contract to GIPSA including, but not limited to, the base price determination, a schedule of any carcass merit premium and discount (including the manner of determining lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), noncarcass merit premiums and discounts, the application of a ledger or accrual account, and the length of the agreement.

Changes to the Monthly Report Submission Form

In addition to the changes we made to the rule, in developing Form P&SP–341, we revised the form from the sample shown in the proposed rule. We revised the look and functionality of the form due to the technology available to read the incoming forms and place the information directly into the database. We made additional changes on the form in order to make the form more understandable and to more accurately specify the information required to be submitted on the form. Images of both the proposed sample and the current version of the form are available at *http://www.usda.gov/gipsa/rulemaking/current/Fed-reg.htm*. The overall look of the form was revised to be a scanable form, which means that the form may be filled in and when we receive it and scan it into a computer file, a computer program will automatically put the information from the completed form into the correct fields in the database. Therefore, the one-page sample as shown in the proposed rule became a three-page form.

When the packer logs in to fill in the electronic version of the form, several items will automatically be filled in. Except for information that will be pre-filled on the electronic version of the form, the electronic version of the form is identical to the hard copy of the form. In addition to the information shown on the sample, we are requesting a Packer ID number, which we will provide to the packer.

We changed the main title of the form from ''Packer/Plant Report'' to ''Monthly Report'' for consistency with the rule. In the instruction line, we removed the reference to the regulations and added the monthly due date. The sample form requested the ''State where plant is located;'' we revised this item to request the city and state in which the plant is located because a packer with multiple plants may have more than one plant in the same state. The sample form requested a phone number; we revised the placement of this item to specify that we are requesting the phone number for the contact person. The sample form included a certification statement and a space for a signature; the option for electronic submission includes the ability to use an electronic signature; we will provide the packer with the required information.

We changed the names of two fields as follows: Firm Name became Packer Name and Date of Report became Report Month and Year.

We moved the placement of the field for the Federal Inspection Number (the USDA Food Safety Inspection Service assigns this number to the plant).

Because the scanable form is a multi-page form, we added fields for the Packer ID and the Federal Inspection Number at the top of pages 2 and 3 of the form to ensure that each submission stays together and is recognized as a complete submission. In addition, we have numbered each section and item on the form for easier reference in the instructions for completing the form. Specifically, the three pages of the form have been labeled as sections 1, 2, and 3. Section 1 requests the identification information (labeled as items 1 through 12); Section 2 requests estimated deliveries (items 13 through 17); and Section 3 requests estimated maximum deliveries (items 18 through 22). We made changes to the labels shown in the table in the sample form to add clarity to the information requested. Specifically, we changed the labels for each of the tables as follows: we changed ''Number of Head of Estimated Deliveries of Swine'' to ''Estimated Number of Swine To Be Delivered Under Existing Contracts'' and we changed ''Number of Head of Estimated Maximum Deliveries of Swine'' to ''Estimated Maximum Number of Swine To Be Delivered Under Existing Contracts.'' We corrected the labels in the tables from ''Existing Contract Types'' to ''Contract Types.'' We added the explanatory text ''(12 Months Following the Report Month)'' to the Month/Year label. On the sample form, the month/year elements were illustrated with a four-digit year; on the actual form, the packer will only need to provide the last two digits of the year. On the sample form, the row for Available contracts shows an X for one of the contract types to denote the packer had available contract(s) of that type; to facilitate the electronic processes, we changed this row to provide ''yes'' and ''no'' choices. Similarly, on the sample form, the row for Expansion clauses required the packer to fill in the number(s) related to the expansion clauses in the existing contracts of each contract type; we changed this row to provide boxes to mark for expansion clauses 1, 2, and 3.

Copies of the form and the instructions are available upon request and have been included in the information collection package submitted to the Office of Management and Budget (OMB) for approval.

Other changes and corrections have been made to the regulations. These changes are summarized later in this document.

Discussion of Comments

On September 5, 2000, we published a proposal in the **Federal Register** (65 FR 53653–53679) to implement the swine contract library regulations as required by the Swine Packer Marketing Contracts subtitle of the LMRA. We solicited comments concerning our proposal for 30 days ending October 5, 2000. We received 11 comments by that date. The comments were from swine producers, swine producer groups, meat packers, meat packer groups, and a state Department of Agriculture. Seven comments supported the proposal in part. The comments raised some questions and concerns about parts of the proposed rule. These questions and concerns and our response to those comments, including changes we are making to the rule, are discussed below.

Packer Reporting Clarifications

Comment: The use of the terms ''type of contract'' and ''example contract'' needs clarification.

Response: There was apparent confusion caused by the use of the terms ''type of contract'' and ''example contracts'' in the proposed rule. The term ''type of contract'' is used, as it is in the legislation, to define contract categories. The term ''example contract'' is used to identify the contracts that packers will submit to GIPSA.

''Type of contract'' refers to the categories that will be used throughout the swine contract library to group contracts. The term ''type of contract'' was used and defined in the LMRA; in order to eliminate confusion we will use the term ''contract type'' in its place in this document and the rule. As defined by the LMRA, the contract type categories are identified by the way in which base price is determined and by the presence or absence of a ledger account.[4] The categories will be used for aggregating data on contracts and contract information in the swine contract library. The six contract type categories used in the swine contract library are:

(1) Swine or pork market formula purchases with a ledger,

(2) Swine or pork market formula purchases without a ledger,

(3) Other market formula purchases with a ledger,

(4) Other market formula purchases without a ledger,

(5) Other purchase arrangements with a ledger, and

(6) Other purchase arrangements without a ledger.

GIPSA will sort packers' contracts into these six categories; the use of contracts in different categories will vary by packer. For example, one packer's contracts may all fit into one category while another packer's contracts may fit into three of the six categories.

In the proposed rule, ''type of contract'' was defined in section 206.1. The definition specified the six categories. For clarity, we changed the term ''type of contract'' to ''contract type'' throughout the rule. These changes appear in paragraphs 206.2(f), 206.3(c)(2), (3), (5), 206.3(g)(ii), (iii), and (v). In addition, we corrected the definition of the term by adding a comma after the word packer in the first sentence. Due to additional changes in response to another comment, the changes for paragraphs 206.3(c)(2) and (g)(ii) are shown following the other comment.

Text of the regulation as proposed	Text of the regulation as revised
Type of Contract. The classification of contracts or risk management agreements for the purchase of swine committed to a packer by the determination of the base price and the presence or absence of an accrual account or ledger (as defined in this section). The type of contract categories are: * * *	*Contract type.* The classification of contracts or risk management agreements for the purchase of swine committed to a packer, by the determination of the base price and the presence or absence of an accrual account or ledger (as defined in this section). The contract type categories are: * * *
206.2(f) *What information from the swine packer marketing contract library will be made available to the public?* GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will summarize the information by region and type of contract as defined in § 206.1. Geographic regions will be defined in such a manner as to avoid divulging data on individual firms' operations and the parties to contracts will not be identified.	206.2(f) *What information from the swine contract library will be made available to the public?* GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will make the information available by region and contract type as defined in § 206.1, for public release one month after the initial submission of contracts. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality.
206.3(c)(3) *Estimates of committed swine.* The packer's estimate of the total number of swine committed under contract for delivery to each plant for slaughter within each of the following 12 calendar months beginning with the 1st of the month immediately following the due date of the report. The estimate of total swine committed will be reported by type of contract as defined in § 206.1.	206.3(c)(3) *Estimates of committed swine.* Each packer must provide an estimate of the total number of swine committed under existing contracts for delivery to each plant for slaughter within each of the following 12 calendar months beginning with the 1st of the month immediately following the due date of the report. The estimate of total swine committed will be reported by contract type as defined in § 206.1.
206.3(c)(5) *Maximum estimates of swine.* The packer's estimate of the maximum total number of swine that potentially could be delivered to each plant within each of the following 12 calendar months, if any or all the types of expansion provisions identified in accordance with the requirement in paragraph (c)(4) of this section are executed. The estimate of maximum potential deliveries must be reported by type of contract as defined in § 206.1.	206.3(c)(5) *Maximum estimates of swine.* The packer's estimate of the maximum total number of swine that potentially could be delivered to each plant within each of the following 12 calendar months, if any or all of the types of expansion clauses identified in accordance with the requirement in paragraph (c)(4) of this section are executed. The estimate of maximum potential deliveries must be reported for all existing contracts by contract type as defined in § 206.1.
206.3(g)(3)(iii) The sum of packers' reported estimates of total number of swine committed by contract for delivery during the next 6 and 12 months beginning with the month the report is published. The report will indicate the number of swine committed by geographic reporting region and by type of contract.	206.3(g)(3)(iii) The sum of packers' reported estimates of the total number of swine committed by contract for delivery during the next 6 and 12 months beginning with the month the report is published. The report will indicate the number of swine committed by geographic reporting region and by contract type.

[4] A ledger or accrual account is an account held by the packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid.

Text of the regulation as proposed	Text of the regulation as revised
206.3(g)(3)(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion provisions in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by type of contract.	206.3(g)(3)(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion clauses in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by contract type.

To provide information on the contract types available, GIPSA considered the information to be provided and the best way to collect that information. GIPSA's interpretation of the requirements is that we should make available information about contract terms (for example, noncarcass merit premiums) that may affect the calculation of the actual price paid to producers. This information is available in the contracts and attached documents that complete the contract. GIPSA considered requiring each packer to submit all of its contracts, but determined that would be unnecessarily burdensome and would not be feasible to publish information in a timely manner. Therefore, to collect the information, GIPSA proposed to require packers to submit example contracts.

''Example contracts'' are contracts that a packer submits to GIPSA to represent the contracts that the packer has with or makes available to producers. The packer must review its contracts and select an example contract to represent those contracts that are identical based on the following criteria (referred to as the ''four example-contract criteria''):

(1) Base price or determination of base price;

(2) Application of a ledger or accrual account;

(3) Carcass merit premium and discount schedules; and

(4) Use and amount of noncarcass merit premiums and discounts.

Section 206.2, paragraphs (b) and (c), requires packers to submit an example of each contract; paragraph (d) specifies the four criteria the packer must use to identify example contracts.

Comment: What contracts need to be reported?

Response: Each packer must submit as many example contracts as are required to represent all of the contracts that it currently has with or makes available to a producer or producers. For the initial submission, the packer will submit example contracts that represent all of the existing and available contracts. For subsequent submissions, the packer will submit example contracts when a change to a previously submitted example contract occurs or a new contract is made available that results in a new example contract based on the four example-contract criteria listed above.

Comment: The use of the terms ''available,'' ''existing,'' and ''offered'' to describe contracts needs clarification. Specifically, the reporting of ''offered'' contracts includes contracts that have expired. Packers should submit only available and existing contracts.

Response: We will require packers to submit example contracts for available and existing contracts. The words ''offered,'' ''available,'' and ''existing'' were all used in the legislation. In the proposed rule we addressed the use of the three terms and explained our interpretation of the use of the words. All three of the words were used with reference to information to be submitted by packers. As stated in the proposed rule, ''Types of contracts offered'' includes both ''types of contracts available'' and ''types of existing contracts'' (65 FR 53655).

We eliminated the use of the term ''offered contracts'' and replaced it with ''available and existing contracts,'' as appropriate. In addition, to further eliminate confusion, we eliminated the use of the word ''offer'' as in ''new offers'' and replaced it with the term ''contracts made available'' as appropriate. The words ''offers,'' ''offered,'' and ''offering'' were all used in the rule language in the proposed rule; to eliminate confusion, we revised the rule language to use the words ''available'' and ''existing'' in their place. These changes appear in the definition of the term ''noncarcass merit premium or discount,'' paragraphs 206.2(c) (title and text), (h), 206.3(c)(1), (c)(2), and (g)(3)(ii). (Paragraphs 206.2(c) and (h) were also revised in response to another comment; the changes to the proposed text for these paragraphs of the regulations are shown below in response to that other comment.)

Text of the regulation as proposed	Text of the regulation as revised
Noncarcass merit premium or discount. An increase or decrease in the price for the purchase of swine offered by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.	*Noncarcass merit premium or discount.* An increase or decrease in the price for the purchase of swine made available by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.
206.3(c)(1) *Existing contracts.* The types of contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must report types of contracts in use even if those types are not currently being offered for renewal or to additional producers. Existing contracts will be shown on the report by providing monthly estimates of the number of swine committed to be delivered under the contracts in each category of the types of contracts as defined in § 206.1.	206.3(c)(1) *Number of swine to be delivered under existing contracts.* Existing contracts are contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must provide monthly estimates of the number of swine committed to be delivered under all of its existing contracts (even if those contracts are not currently available for renewal or to additional producers) in each contract type as defined in § 206.1.
206.3(c)(2) *Available contracts.* The types of contracts the packer is currently offering to producers, or is making available for renewal to currently contracted producers, for purchase of swine for slaughter at each plant. On the monthly report, a packer will indicate each type of contract, as defined in § 206.1, that the packer is currently offering.	206.3(c)(2) *Available contracts.* Available contracts are contracts the packer is currently making available to producers, or is making available for renewal to currently contracted producers, for the purchase of swine for slaughter at each plant. On the monthly report, a packer will indicate each contract type, as defined in § 206.1, that the packer is currently making available.

Text of the regulation as proposed	Text of the regulation as revised
206.3(g)(3)(ii) The types of contracts currently being offered to additional producers or available for renewal to currently contracted producers in each geographic region.	206.3(g)(3)(ii) The contract types currently being made available to additional producers or available for renewal to currently contracted producers in each geographic region.

Comment: Packers should submit any and all amendments, addenda, or specialty clauses that they make available. Submitted contracts should be fully representative of those contracts currently in effect.

Response: The regulation requires packers to submit example contracts. We believe that the example contracts should include any and all amendments, addenda, and specialty clauses that complete the contract. As discussed above, we determined that packers would submit example contracts based on a set of criteria. The criteria used to identify example contracts focuses on price determining contract terms. Using this criteria, the example contracts submitted should provide the full range of price determining contract terms for all available and existing contracts. The example contracts may not provide all of the other provisions (non-price determining contract terms) for all available or existing contracts. GIPSA will publish as much information as possible on the non-price determining contract terms contained in the example contracts while maintaining confidentiality. Therefore, we did not make any changes in response to this comment.

Comment: The requirements for ''reporting concurrently'' and ''real-time reporting'' need clarification. How would this apply, especially during contract negotiations? Contracts and proposed changes to contracts should not have to be reported until negotiations are final. Publish information within one week of the contract first being made available, issuing either a new contract or a change in a contract rather than on the actual day. Examples of contract development include: a final contract developed through a series of discussions with producers and groups of producers; contract made available and accepted the same day or the next day; and contracts renegotiated 2 weeks later and again a week later.

Response: After a packer's initial submission of example contracts for the swine contract library, the packer must provide example contracts when a contract is made available that results in a different example contract as determined by using the four example-contract criteria. The LMRA requires the Secretary to make the information available ''on a real-time basis if practicable.'' In the proposed rule, we used the word ''concurrently'' for the timing of this reporting and proposed to require the packer to provide example contracts to GIPSA on the day the contract is made available. The examples provided in the comments caused us to reconsider the same-day submission requirement.

We believe that the intention of requiring the library to include available contracts and requiring the Secretary make information available on a real time basis, if practicable, was to provide producers with information about contracts in a timely manner to enable the producers to know what terms are available. If packers submit contracts only after final negotiations and do not submit the original contract, then this purpose is defeated. We understand that contract negotiations may result in a contract the same day the contract is made available to producers, which would make submitting the contract, as an example contract, difficult to do on the same day it is made available. We also believe that waiting a week for the submission of the information would not provide adequate notice of the contracts to producers.

The steps involved in collecting and processing the information are time consuming. One of our goals is to minimize the amount of time required to get the information out to the producers. To minimize the length of time it takes us to process the information and provide the reports, we have automated as much of the process as possible.

Even with the automation of our process, we need to receive the example contracts from the packers in a timely fashion, in order for us to meet the requirement of ''real time'' reporting as closely as we can. Therefore, the packer must submit example contracts to us within one business day of making the contract available or revising the contract, when the available contract or the change results in a new or replacement example contract. In addition, packers will also be required to notify us of expired contracts or withdrawn contracts by the next business day, to enable us to remove the information from the contract summary reports and keep the information up to date and representative of available and existing contracts. Therefore, we changed the submission requirements specified in paragraph (c) and paragraph (h) of section 206.2 of the regulations to require the packer to submit available contracts within one business day of making the contract available or of a contract change, expiration, or withdrawal.

Other changes to paragraph 206.2(h) included changing ''on the day that one of its example contracts no longer represents any existing or offered contracts'' to ''when an example contract no longer represents any existing or available contract (expired or withdrawn),'' adding a sentence to the end of the paragraph to specify that the example contracts and notifications must be submitted within one business day, and combining the first and second sentences of the paragraph and correcting the sentence by changing the word ''that'' to ''if'' in the phrase ''if the new example contract.''

Text of the regulation as proposed	Text of the regulation as revised
206.2(c) *What offered contracts do I need to provide and when are they due?* After the initial submission, each packer must send GIPSA an example of each new contract it offers to a producer or producers on the day the contract is offered at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1.	206.2(c) *What available contracts do I need to provide and when are they due*? After the initial submission, each packer must send GIPSA an example of each new contract it makes available to a producer or producers within one business day of the contract being made available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1.

Text of the regulation as proposed	Text of the regulation as revised
206.2(h) *What do I need to do when a previously submitted example contract is no longer a valid example due to contract changes, expiration, or withdrawal?* Packers must submit a new example contract when contract changes result in changes to the criteria specified in paragraph (d) of this section. Packers must notify GIPSA that the new example contract replaces the previously submitted example contract. Packers must notify GIPSA on the day that one of its example contracts no longer represents any existing or offered contracts. This notification must specify the reason, for example, changes to a contract, expiration of an existing contract, or withdrawal of an offered contract.	206.2(h) *What do I need to do when a previously submitted example contract is no longer a valid example due to contract changes, expiration, or withdrawal?* Each packer must submit a new example contract when contract changes result in changes to any of the four example-contract criteria specified in paragraph (d) of this section and notify GIPSA if the new example contract replaces the previously submitted example contract. Each packer must notify GIPSA when an example contract no longer represents any existing or available contract (expired or withdrawn). Each packer must submit these example contracts and notifications within one business day of the change, expiration, or withdrawal.

Comment: For new available contracts, negotiated contracts, and revised contracts, under which circumstances does a packer need to send the contract to GIPSA as an example contract and when is the example contract due? For contract changes, what is required for compliance? Are packers to report modifications to existing contracts as new contracts? This is especially important for verbal contracts because they tend to be modified several times even after initial agreement is reached.

Response: The packer must submit an example contract when a new available contract, negotiated contract, or revised contract is not the same as any previously submitted example contracts, as determined by any difference in the four example-contract criteria. The example contract must be submitted within one business day of a negotiated contract, a contract change, or a contract being made available.

After a contract is made available to a producer and reported to GIPSA as an example contract, there may be changes made through negotiations. When the negotiations are complete and the packer has an accepted contract, the packer will determine if the contract is represented by the same example contract as the available contract, if it is represented by another previously submitted example contract, or if it constitutes a new example contract that must be submitted. If the negotiated contract is represented by a previously submitted example contract that has not expired or been withdrawn, then the packer does not need to submit an example contract for the negotiated contract. If the negotiated contract is not represented by a previously submitted example contract, then the packer needs to submit the negotiated contract as an example contract. The submission will be a new or replacement example contract based on whether or not the previously submitted example contract is still a valid example contract for any available or existing contracts. The packer will report the example contract as required by section 206.2 paragraph (h).

The following chart is designed to help a packer decide if a new available contract, negotiated contract, or revised contract needs to be submitted as an example contract relative to previously submitted example contracts, even those that have expired or been withdrawn. Specific examples, from the comments, follow the chart.

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New available contract: Is the new available contract identical to a previously submitted example contract based on the four example-contract criteria?			
NO	YES		
Send the new available contract as an example contract. The example contract is due the next business day after the new contract is made available to a producer.	Has the previously submitted example contract expired or been withdrawn?	YES	Send the new available contract as an example contract. The example contract is due the next business day after the new contract is made available to a producer.
		NO	The previously submitted example contract will represent the new available contract; the packer does not need to send a new example contract.

Negotiated contract: Is the negotiated contract resulting from an available contract identical to a previously submitted contract based on the four example-contract criteria?			
NO	YES		
Send the negotiated contract as an example contract. The example contract is due the next business day after the contract is negotiated.	Has the previously submitted example contract expired or been withdrawn?	YES	Send the negotiated contract as an example contract. The example contract is due the next business day after the contract is negotiated.
		NO	The previously submitted example contract will represent the negotiated contract resulting from the available contract; the packer does not need to send a new example contract.

Revised contract: Is the revised contract identical to a previously submitted contract based on the four example-contract criteria?			
NO	YES		
Send the revised contract as an example contract. The example contract is due the next business day after the contract is revised.	Has the previously submitted example contract expired or been withdrawn?	YES	Send the revised contract as an example contract. The example contract is due the next business day after the contract is revised.
		NO	The previously submitted example contract will represent the revised contract; the packer does not need to send a new example contract

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In addition, we developed guidelines that are intended to provide clarity to packers for the submission of example contracts. When this final rule is published, we will send a package to each packer required to submit information when the rule is effective; the package will include a copy of the guidelines. Copies of the guidelines are available through the swine contract library Web site and from the Des Moines Regional Office upon request, and have been included in the information collection package submitted to OMB for approval.

Comment: When should a verbal agreement be reported?

Response: The requirement for reporting a verbal contract is the same as for a written contract. A packer must

report a verbal contract to GIPSA within one business day of the contract's availability or change when the available contract or change results in an example contract as determined by the four example-contract criteria.

Comment: If a packer makes a verbal contract available to a producer on Monday, is that available contract reported to GIPSA the same day? Similarly, if negotiations result in an accepted contract on the same day, do the original available contract and subsequent modification both have to be reported?

Response: If both the available contract and the accepted contract occur on Monday and if the original available contract is still available to other producers, then the packer evaluates the differences, based on the four example-contract criteria, to determine if the available contract and the accepted contract are represented by one or two example contracts and if either of those example contracts have been submitted to GIPSA previously and are still included in the swine contract library as example contract(s) for available or existing contracts.

- If there are two example contracts, and if those two example contracts were not represented by a previously submitted example contract, then the packer reports both the available contract and the accepted contract as example contracts; the example contracts would be due on Tuesday (the next business day).
- If there is one example contract, and if the example contract was not a previously submitted example contract, the packer would report the example contract; it would be due on Tuesday (the next business day).
- If the original available contract was not available to any other producers, then only the example contract for the accepted contract, which occurred on the same day as the contract was made available, would be reported; it would be due on Tuesday (the next business day).

Comment: Would the reporting requirement be different if the modification occurred on the Tuesday following the original contract availability on Monday?

Response: If the original contract was made available on Monday and the contract is accepted on Tuesday, the reporting requirement may be different.

- If the contract made available on Monday is an example contract, based on the four example-contract criteria, then that example contract is due on Tuesday (the next business day after it was made available) (for discussion purpose, we will call this Example contract X).
- If the contract made available on Monday were accepted on Tuesday, the packer would determine if, based on the four example-contract criteria, the accepted contract should be represented by a different example contract (for discussion purpose, we will call this Example contract Y). If Example contract Y had not been submitted previously, the packer would report Example contract Y; it would be due on Wednesday (the next business day after it was accepted).

—When the packer submits Example contract Y, if Example contract X is still available to other producers, then the packer will have submitted two example contracts (Example contract X on Tuesday and Example contract Y on Wednesday).

—When the packer submits Example contract Y, if Example contract X was not available to any other producers (the available contract was withdrawn), then Example contract Y, for the accepted contract, would be due on Wednesday and would be submitted as a replacement example contract to replace Example contract X submitted on Tuesday. In this scenario, if the packer wanted to submit only one example contract, the packer could choose to submit Example contract Y earlier than required, by submitting it on Tuesday. Then only Example contract Y would be submitted instead of submitting Example contract X on Tuesday and replacing it with Example contract Y on Wednesday.

Comment: If a verbal agreement on a 5-year window contract is renegotiated two weeks later to extend to 7 years and renegotiated the following week regarding a ''sort loss'' provision, are these three reportable events?

Response: No, this example would not result in three reportable events; however, it may be two reportable events. If the verbal agreement on a 5-year window contract was not represented by a previously submitted example contract, then it would be submitted as an example contract (reportable event). The length of contract is a reportable term of the verbal contract, but it is not one of the four example-contract criteria that are used to identify example contracts. Renegotiating the length of the contract from 5 years to 7 years does not change any of the four example-contract criteria. Therefore, in the example, the result of the first renegotiation would not be a second reportable event. Renegotiating the ''sort loss'' provision would be a change to one of the four example-contract criteria, the carcass merit premium and discount schedules, therefore, if there was not any other previously submitted example contract that is the same based on the four example-contract criteria, then the renegotiated contract would be reported either (1) as a new example contract if the original verbal agreement was still a valid example contract (available to or existing for another producer) or (2) as a replacement example contract to replace the previously submitted example contract.

Comment: If the verbal agreement is put in writing several days afterward, does that constitute a different or unique reportable event?

Response: If the verbal agreement is put in writing several days afterward, it would not constitute a different or unique reportable event. That is, assuming the written version and the previously submitted example contract that represents the verbal contract are the same with regard to the four example-contract criteria. The reportable event would be the original available contract and the accepted contract, if either is not represented by a previously submitted example contract.

Packer Reporting Clarifications

Comment: How should futures-based contracts be reported?

Response: Packers must report futures-based contracts in the same manner as all other contracts, by identifying example contracts based on the four example-contract criteria and submitting the example contracts to us. For the summarized reports we make available, as specified in the definition of ''other market formula purchases,'' we will report futures-based contracts as ''other market formula purchases.''

In the proposed rule, the packer was responsible for the classification of contracts into categories as part of the packer's preparation for submitting example contracts. To eliminate confusion about how to categorize contracts and to ensure uniformity of the application of categories, we eliminated the requirement that packers categorize contracts, which was specified in the preamble of the proposed rule. Instead, GIPSA will categorize the contract into the ''contract type'' category. This change will reduce the burden on packers. We will notify the packer of the categories for the example contracts in writing, by phone, or by another method as

needed.[5] The timing and method of notification will vary, in part, depending on how many example contracts we receive that need to be categorized and how long that takes. We will provide each packer with notification of the categories for each example contract at least 2 weeks before the monthly reports are due.

Comment: Do packers need to report ledger balances for the swine contract library?

Response: No. Contracts with ledgers or accrual accounts will specify the way ledgers or accrual accounts are applied in the contract, for example, the conditions of the ledger and formulas or methods for crediting or debiting ledger accounts. Therefore, we did not make any changes in response to this comment.

Reported Contract Information

Comment: Only publish information for available and existing contracts; do not publish information about contracts that are no longer available or existing. What contract information will GIPSA publish?

Response: We will publish information on available and existing contracts. Within the library that GIPSA is required to maintain, previously available contracts will be maintained, but will not be included in the publicly reported information after the packer notifies GIPSA that the contract is no longer available or has expired.

GIPSA will remove the previously submitted example contract information from the publicly reported information when a packer submits a replacement example contract, or notifies GIPSA that a contract has expired or a contract has been withdrawn. Therefore, we did not make any changes in response to this comment.

Comment: Release redacted contracts.

Response: The amendment to the P&S Act that creates the swine contract library requires the Secretary to make information concerning contract types, not the contracts themselves, available to producers and other interested parties. We considered the alternative of redacting the identity of persons (including parties to the contract) and any proprietary business information from the contracts and releasing the redacted contracts. Publishing redacted contracts could inadvertently allow the identity of a packer to be determined. For example, it may not be clear that information on the device used to estimate lean percent would need to be redacted, but if only one packer is using a specific device to estimate lean percent, then the packer could be identified from the contract. If contracts were redacted to a level of detail to ensure that confidentiality is preserved, then very little information would be released. Therefore, we did not make any changes in response to this comment.

Comment: Change the format of the information GIPSA reports by linking the reported contract terms to the base price.

Response: In designing the contract summary reports, one of our concerns was how to provide as much information as possible and comply with the confidentiality provision in the P&S Act. We concluded that if we linked the terms from a contract together with the base price information, it would be possible to identify an individual packer based on the combination of that information. Therefore, we did not make any changes in response to this comment.

Comment: All carcass and noncarcass merit premiums and discounts, not just those on a grid, should be reported by the packer and by GIPSA. For example, contract terms that were categorized as ''other contract terms'' in the proposed rule, such as length of contract, genetics, type of feed, and medication are specified in contracts as requirements and therefore should be treated as premiums. Contract requirements, other than pricing terms identified in the proposed rule should be reported; for example, genetic requirements to qualify for a contract. Some carcass merit requirements are specifications that are not included on a grid; these specifications should be included in the contract library. Packers should have to report all terms of agreement for a contract so producers can analyze the information and make a marketing decision.

Response: As specified in the definition of ''noncarcass merit premium or discount'' in the regulation, a premium is an increase in the price for the purchase of swine offered by a packer based on a factor other than a carcass characteristic if the actual amount of the premium is known before the purchase and delivery of the swine. If a packer includes an increase in price for any contract term other than a term that specifies a carcass characteristic, it will be treated as a premium.

It appears that there was some confusion about what we will publish in the swine contract library. The sample report shown in the proposed rule was a one-page sample highlighting the types of information that we proposed to publish. As we stated in the preamble of the proposed rule (65 FR 53664):

> The example contracts would provide the contract library with unique base price determinations, the application of ledgers or accrual accounts, carcass merit premium and discount schedules, and the use and amount of noncarcass merit premiums. Other contract terms that could be reported include a variety of terms that could affect producer's marketing decisions, such as quality and weight restrictions, length of contract, and use of packer specified genetics. These other contract terms would not be included in the criteria used to identify example contracts. Therefore, the information contained in the contract library on such other contract terms may not represent the full range of alternatives that packers are offering or have offered. We propose to summarize information on contract terms from the example contracts contained in the contract library to provide as much information about contract terms as possible, subject to the confidentiality protections.

It is our intention to publish as much information from the contract terms as possible. In addition to the price information, the sample showed categories for Quality and Weight Restrictions and Other General Contract Terms. Due to the large volume of information that will be published and for ease of access to the information on the Web site, we changed the format in the following manner:

• In the proposed rule, the sample report showed the base price determination as a combination of five to six pieces of information (65 FR 53663). This was intended to show a variety of the pieces of information that are used to determine the base price for a contract. Generally, the base price is calculated based on a reported price. To simplify the presentation of the base price determination information, on the Web site, base price determination will be presented as a list showing combinations of four key pieces of information, which will identify the reported price used. The remaining details used to determine each of the base prices will be provided under the unique combinations of those four key pieces of information. The four key pieces of information are:

—*Name:* The title or reference to a published or private report (for example, the Agricultural Marketing Service (AMS) Western Cornbelt Lean Hog, plant price, AMS Omaha Corn, or CME lean hog).

—*Version:* Typically, named reports will have more than one version; for reports released more than once a day, the version is the release time

[5] The regulation will require a total of 33 pork packing companies (packers) to report for 53 plants that have the slaughtering capacity specified in the definition of ''packer'' in section 206.1, based on data including 2002, the most recent year for which complete data are available.

of the named report (for example, open, close, mid-session, or 10 a.m.).

—*Time period:* Daily and weekly reports are available and more than one report may be used to calculate the base price. The time period specifies the day(s) or week(s) of the version of the report, that will be used to calculate base price (for example, Day prior to delivery, previous week average, or 20 week average).

—*Series:* On the version of the report, the series will identify the specific number, dollar value, from the report (for example, weighted average, top, or mid-point).

• The sample report in the proposed rule showed two tables for premium and discount schedules, which showed aggregate ranges for the premiums and discounts based on range of lean percent and carcass weight. The premium and discount schedules will be presented in a consistent manner and will show actual adjustments.

• The sample report showed one noncarcass merit premium. Noncarcass merit premiums and discounts will be grouped into categories to show the various amounts for the same noncarcass premium and discount category.

• The sample report showed generalized statements concerning how a ledger account would be handled. Provisions in the application of ledger section will be grouped into four subcategories: Window/Target Price, Window Conditions, Limits on Ledgers, and Termination of Ledger.

• The sample report showed two items each for two categories for other provisions of contracts. Other provisions of contracts will include all other provisions, grouped into categories to show similar contract terms together.

The ''other provisions'' section of the contract summary report will include contract terms from all example contracts for each contract type within a region related to quality and weight, purchase conditions and payment, volume and delivery, business practices, and general contract terms. This will be an aggregation from all example contracts in the region and, to ensure confidentiality, will not be linked to other contract terms from example contracts. The ''quality and weight'' section will include information from contract terms specifying drug usage/withdrawal, genetics, nutrition, carcass evaluation programs, changes in evaluation, quality improvement programs, lean percentage or yield requirements, target weights and weights used for payment, off quality hogs, and meat quality or usability. The ''purchase conditions and payment'' section will include information from contract terms specifying calculation of payment, changes in payment calculation, transmittal of payment, penalties for failure to meet standards, and other payment conditions. The ''volume and delivery'' section will include information from contract terms specifying scheduling and delivery conditions, volume requirements, and right of first refusal. The ''business practices'' section will include information from contract terms specifying facilities, records and financial soundness requirements, transfer of title, and other business conditions. The ''general contract terms'' section will include information from contract terms specifying assignment of agreement, confidentiality, dispute resolution, enforcement, force majeure, indemnity, notice requirements, term of the agreement, termination of the agreement, review and renewal of the agreement, and other general contract terms.

Packers will submit example contracts to GIPSA. The four example-contract criteria used to identify example contracts focuses on price determining contract terms. Therefore, submitted example contracts will provide the full range of price determining contract terms for all available and existing contracts. The example contracts may not provide all of the other provisions (non-price determining contract terms) for all available or existing contracts. GIPSA will publish as much information on the non-price determining contract terms as possible while maintaining confidentiality. Therefore, we did not make any changes in the rule in response to this comment, however the contract summary report has been changed as previously described.

Comment: Use uniform measurements and terms for published contract information, such as the range of percent lean, base price, and carcass weight. Report the base price on a carcass weight basis on a consistent weight basis or have the weight clearly labeled on the report. Reports must foster easy comparison.

Response: To the extent that the packers use uniform measurements and terms, we will report uniform measurements and terms. We will receive example contracts from packers and publish a summary of contract terms based on those example contracts. Different packers use different measurements and terms, which will be reported in the contract summaries.

The information from the swine contract library will provide producers with information from available and existing contracts. We will publish as much information from the contract terms as possible, so producers can see the variety of terms that packers are making available or using. We agree with the commenter that the information must be presented in a way that will foster easy comparison; given the quantity of information and the limitations of the confidentiality protections, we have designed the summary reports to foster easy comparison by grouping like information together into relevant categories of contract terms. We believe that the greatest value in the information from contract terms will be gained by providing producers the ability to see contract terms in as close to the original content and language as possible. In that way, producers will better understand the contract terms that are actually available. To prepare reports that would attempt to convert the contract terms to uniform measures would require conversion factors that were constantly updated and if we waited to assure the use of correct conversion factors, we could not present the information in real-time. Additionally, we could inadvertently change the content or lose information. Therefore, we did not make any changes in response to this comment.

Comment: Producers are unlikely to identify the contract provisions of interest and approach packers within the region to negotiate a contract. Producers looking for a contract with a packer generally have to take one of the contracts currently available. They may look for different available contracts, but individual producers generally don't have the bargaining power to get packers to incorporate beneficial provisions into a newly drafted contract. For the reported contract information to be beneficial it must provide as complete a picture of each contract available as possible.

Response: Amendments to the P&S Act require us to implement a swine contract library and make information available. In addition, it requires us to protect the confidentiality of the information. To meet those requirements, we are providing as much information as possible while maintaining confidentiality. We believe that there are additional benefits to the availability of the information, which we discussed in estimating the benefits for the implementation for this rule.

The purpose of the swine contract library is to provide producers, packers, and other market participants with information that can be readily understood with respect to swine marketing contracts. By providing this information, the swine contract library reports are intended to provide more transparency about contract terms and equalize access to market information for all market participants.

Because of the lack of information in the past, producers have not had access to enough information to identify the variety of contract terms being made available by packers. The publicly available information from the contracts will provide producers with significantly more information than they had in the past about the variety of contract terms. Producers will be able to see the full range of contract terms being made available by the packers in a region, whereas in the past they might only have known about the terms a packer made available to them. With more information they will be better equipped to negotiate contracts. Therefore, we did not make any changes in response to this comment.

Comment: Require packers to report contracts by the state in which they are available or are in force (producer location). Reporting information in this way may be more useful to producers than reporting by the location of the plant.

Response: We will require each packer to report contracts by the plant location. We understand that some producers may find it useful to review information for contracts that are available to producers located in their geographic region, or specifically their state. Most producers know where plants are located in relationship to the production site. If a producer is willing to transport animals a significant distance, that producer will be able to obtain information from the area to which he is willing to ship. The contract terms and prices are likely to be associated to plants. Packers do not tend to make contracts available based on producer location, rather, they make contracts available based on the plant location. That is, a packer specifies contract terms, such as base price determination, based on market conditions prevailing at the plant. The packer does not distinguish where the animal originated, only where it will be slaughtered.

In planning the swine contract library summary report, we considered various ways in which we could present meaningful information to producers. Among other things, we considered the geographic areas for which we publish information. One of the criteria we use to meet the confidentiality requirements is that we will not publish information from fewer than three packers in a region. If we were to publish information by state, then we would encounter greater constraints about information that we publish because there are states in which only one or two packers operate. Given the requirements for confidentiality, publishing information by multi-state regions allows us to publish more information.

We decided to report the contract information on a regional basis, based on the plant locations, to provide as much price information from the contracts as possible under the confidentiality protections. This method of providing information informs producers and other interested persons that one of the packers that have hogs slaughtered at a plant in that region has an available or existing contract that contains some of the terms published in the summary for that region.

In addition, we will not receive information from packers to show where every contract is available based on producer locations. We considered this alternative, but determined that it would add burden to the packers without providing additional information. Specifically, it would have been time consuming for packers to provide the additional information and for us to receive and process the additional information. By using plant locations, there is a one-to-one relationship between the example contract and the plant location that allows us to publish the information from each contract to a single region. If, however, producer locations had been used, we would have to know each state in which the packer is making the contract available to producers, and then publish the contract information for each of those states. If we asked the packer to identify producer locations for each example contract, and if all producer locations were not immediately known to the packer, the packer would need additional time to collect and provide that information and then more time would be required for us to receive and process the producer locations as the locations became known. If we had required packers to submit producer locations for all the contracts that the example contract represented, then a potential negative result could have been packers limiting the availability of contracts to producers in a specific location.

We considered all of these factors and because changing the report summaries to producer locations would not result in the release of additional information, we determined that it would not be worth the additional burden and costs that would have been required. Therefore, we did not make any changes in response to this comment.

Confidentiality

Comment: There is no reasonable expectation of privacy with regard to the information to be available in the library and packers, for the most part, have not attempted to keep contracts confidential.

Response: The amendment to the P&S Act that requires us to establish and maintain the swine contract library specifically requires us to protect the identity of persons, including parties to contracts reported to us by packers and to protect proprietary business information from those contracts. Section 222(c) of the P&S Act specifies that the reporting requirements of the swine contract library are subject to the protections provided under section 251 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1636), which was initiated by the LMRA. We must comply with the statutory requirement. Therefore, we did not make any changes in response to this comment.

Comment: How will confidentiality be maintained? Do not identify any individual packer; do not include the term ''from each packer,'' as used in the proposed rule, in the final rule. It is important to maintain confidentiality when reporting contract information, including proprietary information and the identity of packers and producers.

Response: To maintain confidentiality, as required by the amendment to the P&S Act, we will publish information about the contract terms and not the contracts themselves. Among the confidentiality provisions is the requirement to ensure that confidentiality is preserved with respect to the identity of the parties to the contracts. Therefore, our summaries and reports will not identify the parties to the contract (packer names or producer names).

As stated in the proposed rule (65 FR 53669), ''to ensure confidentiality, information will only be published if it is obtained from no fewer than three packers representing a minimum of three companies, and no packer represents a dominant portion of the region's total'' for the particular report.

To ensure that confidentiality is preserved regarding the identities of persons, including parties to a contract, and the proprietary nature of the information included in the contracts, we will present the contract library information without indications about

how the contract terms relate to each other within an example contract. The contract library information will provide a summary of the contract terms that are available in each region.

The use of the term ''from each packer'' in the proposed rule came directly from the amendment to the P&S Act. Among other things, new section 222(d) of the P&S Act requires the Secretary to provide specific information in a monthly report, including information on the contracts types available from each packer. The information that we will report includes the contracts types available from packers in a specific region. Each packer that meets the definition of packer in section 206.1 must submit example contracts and volume information to GIPSA. However, the published reports will not identify the names of packers that submitted contracts to GIPSA. Therefore, we did not make any changes in response to this comment.

Comment: If there are so few packers within a region that information cannot be reported due to the confidentiality protections, it may be an indication that there may be too great a concentration of market share in that region. GIPSA should investigate whether a packer is taking actions in the region that violate the P&S Act, specifically, actions that have the purpose or effect of creating a monopoly in violation of section 202 of the P&S Act.

Response: We routinely investigate packers for potential violations of the P&S Act. If any information received for the swine contract library suggests a potential violation of the P&S Act, we will investigate to determine if a violation of the P&S Act has occurred or is occurring. Therefore, we did not make any changes in response to this comment.

Outreach

Comment: Develop a comprehensive producer education or outreach plan to inform producers of the reports, their content, how they can be used, and where they can be accessed. Add other avenues of information dissemination because some pork producers lack Internet access.

Response: GIPSA will use a variety of methods to disseminate information about the swine contract library, with the intent of making every potential customer aware of the swine contract library, its capabilities and availability. A press release containing basic information about the swine contract library will be issued to national and local press markets, to trade and industry groups for publication, and to USDA agencies and offices that have contact with producers and other interested groups and individuals who might benefit from the information in the swine contract library. GIPSA will make use of public service announcements distributed through unpaid media, USDA agency newsletters for producers and other stakeholders, and radio to inform producers that the swine contract library reports are available and where to find them. GIPSA will provide information about the swine contract library when meeting with trade and industry groups for dissemination to members, and directly to individuals in meetings as appropriate.

The swine contract library reports will be available to customers and the general public on the Internet, posted on the GIPSA Web site, linked to other USDA Web sites, and available in hard copy at GIPSA's Packers and Stockyards Programs headquarters in Washington, DC, and at the regional office located in Des Moines, Iowa. The swine contract library Internet site is compliant with Section 508 of the Rehabilitation Act[6] for those customers using computer software requiring adherence to Section 508 standards for alternate use. GIPSA will coordinate customer access to the services of the USDA Target Center[7] for those who require alternative formats of the swine contract library reports.

GIPSA is working with other USDA agencies that have an active presence at the local level to address the difficulties that may be faced by some producers who would benefit from the information contained in the swine contract library, but do not personally have immediate access to the Internet. Many communities have libraries with Internet access and capabilities that provide such service to residents. Producers can use these services for access to the swine contract library. In addition, while GIPSA received four comments on the proposed rule addressing Internet access to the swine contract library, half (two) endorsed this method of information delivery, one pointed out the need for an active outreach and communications effort supporting this method of information delivery, and only one stated that Internet access alone was not sufficient. (For additional information, contact GIPSA using the phone number, address, or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.) No changes were made to the rule based on these comments.

Comment: Swine producers need to understand the contract library information. Simplify everything possible. Test the reports with pork producers.

Response: We agree with the commenter that producers need to understand the information from the swine contract library. Wherever possible, we have made adjustments to the presentation of the information to simplify it and make it understandable. As the information is made public and we hear from producers we will continue to make changes where possible to simplify the presentation of the information. As stated in the proposed rule, we will ''conduct ongoing analyses of the data and information obtained from packers, and would explore ways to increase the usefulness of the data and information'' (65 FR 53671).

Throughout the development process, one of the considerations was the best way to present the information to make it understandable and usable. One of the difficulties is that contracts, and specifically individual contract terms, can be difficult to understand. The purpose of the swine contract library is to provide information to producers and other interested parties about the contract type's terms available from packers; it does not replace legal or other business advice for understanding contract terms or how the terms apply to an individual producer's business.

Another difficulty was the volume of information we expect to receive and summarize to make publicly available. We have simplified the summarization, presentation of, and access to the information where possible. We will reduce the volume of information by eliminating redundancies, where possible; for example, contract terms that show up in multiple contracts will be included once in the summary of contract terms. To make it easier to get to specific information, we organized the reports into sections.

The contract summary report of contract terms available within a region consists of four sections. The ''determination of base price'' section includes terms related to how base price is set. The ''premiums and discounts'' section includes terms related to

[6] See 29 U.S.C. 749d for section 508 of the Rehabilitation Act.

[7] The U.S. Department of Agriculture established the Technology Accessible Resources Gives Employment Today (TARGET) Center, to support the USDA with assistive technology and ergonomic solutions. As part of the USDA's commitment to ensure compliance with Section 508 requirements that all electronic and information technology be accessible to persons with disabilities, the USDA TARGET Center is the contact point and resource center for converting USDA information and documents into alternative formats. Alternative formats include Braille, large print, video description, diskette, and audiotape formats.

adjustments to the base price as determined by carcass and noncarcass traits. This section includes carcass merit premium and discount schedules, grading devices and formulas, and noncarcass merit premiums and discounts, specifying the dollar or percentage adjustment (or range) of the premium or discount. The ''application of ledger'' section includes terms related to the application and use of ledger or accrual accounts. This section includes information from contract terms specifying window/target price, window conditions, limits on the ledger, and termination of ledger. The ''other provisions'' section includes terms related to any item other than those listed above, such as quality and weight, purchase conditions and payment, volume and delivery, business practices, and general contract terms.

We will group like information and list it with descriptive headings. For example, the section that provides the determination of base price information will organize the base prices by several key pieces of information (Name, Version, Series, Time Period) for example, Iowa/Southern Minnesota, Mid-Session, Weighted Average, Day of Delivery. Additional details that complete the determination of base price will be listed with these key pieces of information. This approach will allow users to see the range of base price options.

When we tested the summary report we involved individuals within USDA who have backgrounds in and knowledge of hog marketing, including some former hog producers. Where possible, within the confidentiality requirements, we made changes based on their suggestions to simplify the presentation of the information and make the information more accessible and understandable.

Availability of Contracts

Comment: Must packers make contracts available to every producer?

Response: No. This regulation requires packers to submit example contracts to GIPSA; neither the amendments to the P&S Act that created the swine contract library or this regulation implementing it imposes requirements for how or to whom a packer makes a contract available. Packers must continue to comply with the requirements in the P&S Act and related regulations. We did not make any changes in response to this comment.

Enforcement

Comment: Does GIPSA intend to audit the estimates of the number of contracted swine that packers must submit in monthly reports?

Response: Yes, on an ongoing basis, GIPSA will monitor and review the accuracy of the estimates of the number of contracted swine that packers specify in the submitted monthly reports. In addition, we will monitor and review the example contract submissions and the monthly reports for completeness, consistency, and accuracy. As specified in the proposed rule, packers must maintain records to verify the accuracy of the information required to be reported. Therefore, we did not make any changes in response to this comment.

Comment: What will the penalty be for not including carcass or noncarcass premiums and discounts in the reported contract?

Response: The reported example contract must be complete and, therefore, must include all carcass and noncarcass premiums and discounts associated with the example contract. As specified in new section 222(e) of the P&S Act, to willfully fail or refuse to provide accurate information constitutes a violation of the P&S Act. Excluding carcass or noncarcass premiums or discounts that apply to the contract from the reported example contracts would constitute a violation of Title II of the P&S Act. Section 203 of the P&S Act sets forth the procedures that the Secretary is authorized to follow whenever there is reason to believe that any packer has violated or is violating a provision of Title II of the P&S Act. Section 203 of the P&S Act also specifies the sanction that may be assessed if the Secretary determines that a violation has occurred.[8] Therefore, we did not make any changes in response to this comment.

State Laws

Comment: Minnesota, Iowa, and several other Corn Belt States have forbidden contract clauses requiring contract terms to be kept confidential. In addition, Minnesota requires packers to file contracts. Will these State laws be preempted?

Response: No. The state statutory requirement that there be no confidentiality clause in contracts will not be preempted, but GIPSA will comply with the P&S Act amendment requirement that requires confidentiality of certain information from contracts submitted to GIPSA for the swine contract library. Implementation of the swine contract library will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with the statute. The state laws mentioned in the comment do not appear to present an irreconcilable conflict with the statute or this regulation which implements the statute. We did not make any changes in response to this comment.

Evaluate Contracts

Comment: Knowing the provisions of contracts and being able to differentiate the value of various contracts and contract terms are two different things. Will GIPSA or some other USDA agency provide a test or worksheet that a producer can use to evaluate contracts in the future?

Response: The purpose of the swine contract library is to provide information to producers and other interested parties about the contract types and terms available from packers; it will not provide guidance for evaluating contracts. However, through the GIPSA Web site on the Internet, we provide links to information that may help producers evaluate livestock and poultry contracts. In addition, through the AMS Web site on the Internet, AMS provides information on contracting in agriculture and making the right decisions about contracting. We did not make any changes in response to this comment.

Summary of Changes to the Rule

As discussed above, in response to comments, we made changes to the rule. Also, we made a number of additional changes to improve consistency, clarity, and make corrections. All of the changes to the rule are summarized below.

In response to comments, we made the following changes:

- We eliminated the use of the words ''offer,'' ''offers,'' ''offered,'' and ''offering.'' We replaced the use of the word ''offer'' as in ''new offers'' with ''contracts made available'' or ''available contracts'' as appropriate. These changes appear in the definition of the term ''noncarcass merit premium or discount,'' paragraphs 206.2(c) (title and text), (h), 206.3(c)(1), (c)(2), and (g)(3)(ii).
- We changed the term ''type of contract'' to ''contract type.'' These changes appear in the definition of the term and in paragraphs 206.2(f), 206.3(c)(2), (3), (5), (g)(iii), and (v). Other changes included correcting the definition of ''contract type'' by adding a comma after the word packer in the first sentence, in paragraph 206.3(g)(3)(iii), and correcting the

[8] Any such violation will be subject to an order to cease and desist from continuing such violation and a civil penalty of not more than $11,000 for each such violation.

sentence by inserting the word ''the'' in front of the phrase ''total number of swine.''

• We changed the rule to require that packers submit new example contracts and notification of changes to GIPSA within one business day after the availability of the contract or the day the change was made. These changes appear in paragraphs 206.2(c) and (h). We made the following related changes in paragraph 206.2(h): We changed ''on the day that one of its example contracts no longer represents any existing or offered contracts'' to ''when an example contract no longer represents any existing or available contract (expired or withdrawn)'' and we added a sentence to the end of the paragraph to specify that the example contracts and notifications must be submitted within one business day. Other changes made to paragraph 206.2(h) included combining the first and second sentences of the paragraph and correcting the sentence by changing the word ''that'' to ''if'' in the phrase ''if the new example contract.''

We revised the definition of ''packer'' in section 206.1 to apply to a packer purchasing at least 100,000 swine per year. Other changes to the definition include deleting the phrase ''or firm'' and the word ''would'' from the definition of ''packer.''

The proposed rule inconsistently referred to the packers in the singular and plural and by personal and impersonal pronouns. We changed references to packers throughout to make them consistent as follows: We changed plural references to the singular, ''packers'' became ''each packer'' and we changed personal pronouns to impersonal pronouns, ''they'' became ''it.'' Other words in the sentences were revised as needed based on these changes. For example, in paragraph 206.3(c), ''packers file'' was corrected to ''each packer files.'' These changes appear in paragraphs 206.2(a), (e), and (h), and paragraphs 206.3(a), (b), (c), (e), (f), and (f)(2). A specific example of this change is shown in the following table. Another change we made in paragraphs 206.2(e)(1), (2), (g), 206.3(c), (f)(1), (2), and (g)(1) was correcting the regional office address by replacing ''the GIPSA Regional Office at Room 317'' with ''USDA GIPSA, Suite 317.''

Text of the regulation as proposed	Text of the regulation as revised
206.3(f)(2) *Printed report.* Packers may deliver their printed monthly report to the GIPSA Regional Office at Room 317, 210 Walnut Street, Des Moines, IA 50309.	206.3(f)(2) *Printed report.* Each packer may deliver its printed monthly report to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

For consistency and clarity, we revised references to the criteria used to identify example contracts to read ''the four example-contract criteria.'' These changes appear in paragraphs 206.2(d) and (h). A specific example of this change is shown in the following table.

Text of the regulation as proposed	Text of the regulation as revised
206.2(d) *What criteria do I use to select example contracts?* For purposes of distinguishing among contracts to determine which contracts may be represented by a single example, contracts will be considered to be the same if they are identical with respect to all of the following four criteria:	206.2(d) *What criteria do I use to select example contracts?* For purposes of distinguishing among contracts to determine which contracts may be represented by a single example, contracts will be considered to be the same if they are identical with respect to all of the following four example-contract criteria:

Paragraph 206.2(e) was revised to add the option for electronic submission of example contracts and notifications. We changed ''must send'' to ''may submit'' with specification of two options for submission, and we created two subparagraphs to specify the two methods for submitting example contracts and notifications. For clarity, we changed the title of the paragraph to more correctly describe the requirements provided in the paragraph. In addition, we added ''and notifications'' after ''submit the example contracts'' and changed ''required by paragraphs (b) and (c) of this section'' to ''required by this section.''

Text of the regulation as proposed	Text of the regulation as revised
206.2(e) *Where do I send my contracts?* Packers must send the example contracts required in paragraphs (b) and (c) of this section to the GIPSA Regional Office at Room 317, 210 Walnut Street, Des Moines, IA 50309.	206.2(e) *Where and how do I send my contracts?* Each packer may submit the example contracts and notifications required by this section by either of the following two methods: (1) *Electronic report.* Example contracts and notifications required by this section may be submitted by electronic means. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit example contracts electronically, contact GIPSA through the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309. (2) *Printed report.* Each packer that chooses to submit printed example contracts and notifications must deliver the printed contracts and notifications to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

We changed ''swine packer marketing contract(s)'' references to ''swine contract library'' everywhere it appeared. The term ''swine packer marketing contract'' was used throughout the proposed rule to be consistent with the title of the amendments to the P&S Act. These regulations implement the swine

contract library as required by the Swine Packer Marketing Contract subtitle of the P&S Act. We believe that ''swine contract library'' is more accurate than the phrase ''swine packer marketing contracts.'' The information from the contract library will be available publicly, however, the contracts will not be released. Therefore, to avoid confusion, we changed all of the references. These changes appear in the titles of Part 206, section 206.2, and paragraphs 206.2(f) and (g), and in the text of paragraph 206.3(a). Examples of this change are shown in the following table. Similarly, we changed ''swine packer marketing contract information'' to ''swine contract information'' in 206.2(a). In addition, for consistency, we deleted the words ''swine packer marketing contract'' from the title of paragraph 206.3(a).

We changed the last sentence of paragraph 206.2(g) by deleting the phrase ''and/or examples of new contracts'' because the word ''information'' includes example contracts, and deleting the phrase ''in Des Moines, Iowa,'' which was immediately followed by the office address in the proposed rule and therefore redundant.

Text of the regulation as proposed Part 206—Swine Packer Marketing Contracts	Text of the regulation as revised Part 206—Swine Contract Library
206.2 Swine packer marketing contract library.	206.2 Swine contract library.
206.3(a) *Do I need to provide swine packer marketing contract monthly reports?* Packers, as defined in § 206.1, must provide information for each swine processing plant that they operate or at which they have swine slaughtered that has the slaughtering capacity specified in the definition of packer.	206.3(a) *Do I need to provide monthly reports?* Each packer, as defined in § 206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity specified in the definition of packer.

In paragraph 206.2(f), we changed the second sentence to eliminate redundancy. Both the first and second sentences, as proposed, began ''GIPSA will summarize.'' We changed the second sentence to delete the phrase and to indicate when the first summary report will be made available. In addition, we changed the end of the last sentence from ''as to avoid divulging data on individuals firms'' operations and the parties to contracts will not be identified'' to ''to provide as much information as possible while maintaining confidentiality'' to refer to confidentiality in a consistent manner in this document. We also made this change in paragraph 206.3(g)(2). We changed ''Geographic regions will be defined in such a manner as to avoid divulging data on individual firms' operations and may be modified from time to time.'' to ''Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality and may be modified from time to time.''

Text of the regulation as proposed	Text of the regulation as revised
206.2(f) *What information from the swine packer marketing contract library will be made available to the public?* GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will summarize the information by region and type of contract as defined in § 206.1. Geographic regions will be defined in such a manner as to avoid divulging data on individual firms' operations and the parties to contracts will not be identified.	206.2(f) *What information from the swine contract library will be made available to the public?* GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will make the information available by region and contract type as defined in § 206.1, for public release one month after the initial submission of contracts. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality.
206.3(g)(2) Information in the report will be aggregated and reported by geographic regions. Geographic regions will be defined in such a manner as to avoid divulging data on individual firms' operations and may be modified from time to time.	206.3(g)(2) Information in the report will be aggregated and reported by geographic regions. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality and may be modified from time to time.

In paragraph 206.2(b), the requirement is for the packer to send the example contracts to GIPSA; it is not a packer's responsibility to also ensure that we receive the example contracts. Therefore, we revised the sentence to remove the phrase ''and the Grain Inspection, Packers and Stockyards Administration (GIPSA) must receive.''

To add clarity, we changed the title of paragraph 206.3(b). The new title more correctly describes the requirements provided in the paragraph. Other changes included abbreviating ''Iowa'' to ''IA'' and adding the timing for the beginning of the monthly reports.

Text of the regulation as proposed	Text of the regulation as revised
206.3(b) *What information do I need to provide and when is it due?* Each packer must send a separate monthly report for each plant that has the slaughtering capacity specified in the definition of packer in § 206.1. Packers must deliver the report to the GIPSA Regional Office in Des Moines, Iowa by the close of business on the 15th of each month. The GIPSA Regional Office closes at 4:30 p.m. Central Time. If the 15th day of a month falls on a Saturday, Sunday, or federal holiday, the monthly report is due no later than the close of the next business day following the 15th.	206.3(b) *When is the monthly report due?* Each packer must send a separate monthly report for each plant that has the slaughtering capacity specified in the definition of packer in § 206.1. Each packer must deliver the report to the GIPSA Regional Office in Des Moines, IA, by the close of business on the 15th of each month, beginning at least 45 days after the initial submission of example contracts. The GIPSA Regional Office closes at 4:30 p.m. Central Time. If the 15th day of a month falls on a Saturday, Sunday, or federal holiday, the monthly report is due no later than the close of the next business day following the 15th.

To correct a reference, in paragraph 206.3(f) we changed ''monthly contract information'' to ''monthly report.'' In addition, we added ''required by this section.''

Text of the regulation as proposed	Text of the regulation as revised
206.3(f) *Where and how do I send my monthly contract information?* Packers may submit their monthly reports by either of the following two methods:	206.3(f) *Where and how do I send my monthly report?* Each packer may submit monthly reports required by this section by either of the following two methods:

To add clarity, we changed the title of paragraph 206.3(c). The new title more correctly describes the requirements provided in the paragraph. Other changes included correcting the form number reference in paragraph 206.3(c) and including information on where to obtain the form.

Text of the regulation as proposed	Text of the regulation as revised
206.3(c) *How do I make a monthly report?* The monthly report that packers file must be reported on PSP Form 341 and must provide the following information:	206.3(c) *What information do I need to provide in the monthly report?* The monthly report that each packer files must be reported on Form P&SP–341, which will be available on the Internet on the GIPSA Web site *(http://www.usda.gov/gipsa/)* and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309. In the monthly report, each packer must provide the following information:

In paragraph 206.3(e), the first sentence clearly states the requirement. The second sentence, as proposed, neither added requirements nor clarity. Therefore, we determined that the second sentence was unnecessary and deleted it to simplify the paragraph.

Text of the regulation as proposed	Text of the regulation as revised
206.3(e) *When do I change previously reported estimates?* Regardless of any estimates for a given future month that may have been previously reported, current estimates of deliveries reported as required by paragraphs (c)(3) and (c)(5) of this section must be based on the most accurate information available at the time each report is prepared. Packers must update or change any previously reported estimates for any month(s) included on the current report to reflect accurate information on producers' plans, initiation of new contracts, or any other circumstances that cause changes in expected future deliveries.	206.3(e) *When do I change previously reported estimates?* Regardless of any estimates for a given future month that may have been previously reported, current estimates of deliveries reported as required by paragraphs (c)(3) and (c)(5) of this section must be based on the most accurate information available at the time each report is prepared.

In paragraph 206.3(f)(1), we deleted ''e-mail or any other'' because during development of the reporting process we determined that we could not offer an e-mail submission option that would be secure and guarantee the confidentiality of the files submitted during the transmission process. Instead, we developed a secure Web site so that we could offer the option of electronic submission.

Text of the regulation as proposed	Text of the regulation as revised
206.3(f)(1) *Electronic report.* Information reported under this section may be reported by electronic means, to the maximum extent practicable. Electronic submission may be e-mail or by any other form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit information electronically, contact GIPSA through the Internet on the GIPSA homepage (*http://www.usda.gov/gipsa/*) or at the GIPSA Regional Office at Room 317, 210 Walnut Street, Des Moines, IA 50309.	206.3(f)(1) *Electronic report.* Information reported under this section may be reported by electronic means, to the maximum extent practicable. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit information electronically, contact GIPSA through the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

We changed the word ''homepage'' to ''Web site'' each time it appeared. The information from the swine contract library will be available on the GIPSA Web site, however it will not appear directly on the GIPSA homepage. Users will initially find a direct link to the information on the GIPSA homepage, but in the future, as the GIPSA Web site goes through changes and updates, the link may not continue to appear on the homepage if there is another logical place for it to appear. This change appears in paragraphs 206.2(g) and paragraphs 206.3(f)(1) and (g)(1). Other changes to paragraph 206.3(g)(1) included changing the first sentence to more correctly describe the available information by changing ''contract types and estimated deliveries'' to ''estimated deliveries by contract type.''

In paragraph 206.3(c)(1), we revised the title to more correctly describe the requirements provided in the paragraph. We revised the first sentences of paragraphs 206.3(c)(1) and (2) to clarify that they provide definitions for existing and available contracts, respectively, for which each packer must submit

estimates on monthly reports.[9] In addition, we revised the second and third sentences to combine text to more directly and correctly state the requirement. As proposed, the second sentence could have been misleading; the requirement is not to report the types of contracts, but rather to report the number of estimated swine to be delivered. The revised sentence focuses on the estimates to be reported, it does not change the requirement to report those estimates. Other changes included in paragraph 206.3(c)(2) included changing the phrase ''for purchase'' to ''for the purchase'' and in paragraphs 206.3(c)(1) and (c)(2) changing ''the types of contracts'' to ''contracts.''

In the proposed rule, we used the terms ''expansion provisions'' and ''expansion clauses'' to mean the same thing. In a contract, the expansion clause specifies the possibilities for increase of a quantity. For consistency, in the title of paragraph 206.3(c)(4) and the text of paragraphs 206.3(c)(4), (4)(iii), (5), (g)(3)(iv), and (v), we revised ''provisions'' to ''clauses.'' For consistency, in paragraphs 206.3(c)(4)(i) and (ii), we revised ''contract terms'' to ''clauses.'' A specific example of this change in paragraph 2.6.3(c)(4) is shown in the following table. Other changes in section 206.3 included correcting the sentence in paragraph (c)(5) by inserting the word ''of'' in front of the phrase ''the types of expansion clauses'' and added ''for all existing contracts'' to the second sentence for clarity and in paragraph 206.3(g)(3)(iv) changing the word ''ensuing'' to ''following'' for consistency and plain language.[10]

Text of the regulation as proposed	Text of the regulation as revised
206.3(c)(4) *Expansion provisions.* Any conditions or circumstances specified by provisions in any existing contracts that could result in expansion in the estimates specified in paragraph (c)(3) of this section. Each packer will identify the expansion provisions in the monthly report by listing a code for the following conditions: (iii) Contract terms that allow for a range of the number of swine to be delivered; (iii) Contract terms that require a greater number of swine to be delivered as the contract continues; (iii) Other provisions that provide for expansion in the numbers of swine to be delivered.	206.3(c)(4) *Expansion clauses.* Any conditions or circumstances specified by clauses in any existing contracts that could result in an increase in the estimates specified in paragraph (c)(3) of this section. Each packer will identify the expansion clauses in the monthly report by listing a code for the following conditions: (iii) Clauses that allow for a range of the number of swine to be delivered; (iii) Clauses that require a greater number of swine to be delivered as the contract continues; (iii) Other clauses that provide for expansion in the numbers of swine to be delivered.

To specify that estimates reported in the monthly reports come from contracts and not from contract types, in the title of paragraph 206.3(d), we changed ''type of contract'' to ''contract.'' In addition, for clarity with the wording used throughout the regulations, we changed the word ''head'' to ''swine.''

Text of the regulation as proposed	Text of the regulation as revised
206.3(d) *What if a type of contract does not specify the number of head committed?*	206.3(d) *What if a contract does not specify the number of swine committed?*

In the proposed rule, the authority citation included 7 U.S.C. 198, 198a, and 198b, which are the sections of the U.S. Code in which the sections of the P&S Act that require the establishment of the swine contract library are codified. We corrected the authority citation by replacing those citations with Section 941 of Public Law 106–78, 113 Statute 1135, which is the section of the Livestock Mandatory Price Reporting Act that requires regulations to implement the swine contract library.

We added the OMB control number at the end of sections 206.2 and 206.3 to show the OMB approval for the collection of information required by the swine contract library regulations, which OMB has approved concurrently with the approval of the final rule.

Summary of Swine Contract Library Final Rule

Who must provide contract information? The regulations apply to a packer purchasing at least 100,000 swine per year and slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions:

(1) A swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine; or

(2) Any swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years that has the capacity to slaughter at least 100,000 swine per year, based on plant capacity information.

Throughout this document, references to ''packers'' refer to the packers that are required to report under the swine contract library regulations. Throughout this document, references to ''plants'' refer to the plants at which the swine are slaughtered for which the packers are required to report. Currently, most of the packers required to report slaughter swine at a plant that the packer owns. In a few cases, the packer required to report has the swine slaughtered at a plant it does not own.

What contracts will packers need to provide? Each packer must send GIPSA example contracts for available and existing contracts with a producer (or producers) for the procurement of swine for slaughter. For a packer using more than one plant, the packer must submit a separate package of example contracts for each plant that has the slaughtering capacity specified in the definition of ''packer.''

For verbal contracts, packers must provide written descriptions of the terms of all agreements for the purchase of swine for slaughter for which the parties did not execute a document to signify the existence of the agreement.

As specified in section 206.2(a), (b), and (c) of the regulations, each packer must file an initial submission of example contracts currently in effect or available and subsequent submissions with example contracts made available at each plant at which the packer slaughters swine.

[9] The table showing the changes from the proposed rule in paragraphs 206.3(c)(1) and (c)(2) is in the Discussion of Comments section of this document.

[10] The table showing the changes from the proposed rule in paragraphs 206.3(c)(5) is in the Discussion of Comments section of this document.

The initial submission of example contracts is due the first business day of the month following the determination that the plant has the slaughtering capacity specified in the definition of ''packer.'' GIPSA has made that determination for plants that are currently in operation; in the future as new plants open, the determination will be made as the information is available. When this final rule is published in the **Federal Register**, GIPSA will notify each packer in writing if it is required to submit information, and how and when to submit, for the swine contract library. To submit information for the swine contract library, example contracts and monthly reports, packers may submit hard copies or submit electronically via the swine contract library Web site. For new contracts, the packer must send the example contract to our Regional Office in Des Moines, within one business day of the contract's availability.

In addition to submitting example contracts, as specified in section 206.2(h) of the regulations, when there are any changes, expirations, or withdrawals to previously submitted example contracts, then packers must submit revised example contracts and notify us of expirations and withdrawals within one business day after expiration or withdrawal. The packer's example contracts must represent all of the contracts made available by the packer to swine producers for the purchase of swine for slaughter. The packer may submit example contracts and notifications electronically.

What criteria will packers use to select example contracts? To decide which contracts will serve as examples of similar contracts, as specified in section 206.2(d) of the regulations, packers will use the following criteria (four example-contract criteria):

(1) The base price or the determination of base price;

(2) The application of an accrual account or a ledger;

(3) The carcass merit premium and discount schedules (including the manner of determining lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied); and

(4) The use and amount of noncarcass merit premiums and discounts.

For contracts that are identical in all four example-contract criteria listed above, a packer will need to file only one example contract to represent that set of contracts for each plant that slaughters the swine purchased under the example contract.

What must the packer provide for monthly reports? As specified in section 206.3 of the regulations, packers will submit monthly reports that will provide, for existing contracts, the estimated number of swine committed and the maximum number of swine that could be delivered under contract for each of the next 12 months, expansion clauses for each contract type, and specify the contract types for which the packer has any available contracts.

The packer must provide a separate monthly report for each of the plants that it uses that has the slaughtering capacity specified in the definition of ''packer,'' even if it had no existing contracts for which to report estimated deliveries of swine. The packer must estimate the number of swine to be delivered under each contract at the plant, aggregated by contract type. If the packer had no existing contracts for any or all contract types, the reported estimates would be zero. GIPSA will notify the packer of the contract type for each example contract.

What information from the swine contract library will GIPSA make available to the public? The example contracts will provide base price determinations, the application of ledgers or accrual accounts, carcass merit premium and discount schedules, and the use and amount of noncarcass merit premiums and discounts. Other contract terms that will be reported include a variety of terms, such as quality and weight restrictions, length of contract, and use of packer specified genetics. We will summarize information on contract terms from the example contracts to provide as much information about contract terms as possible, subject to confidentiality protections specified in section 251 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1636).

We will publish in the monthly report as much information collected from packers each month as possible, subject to the requirement to maintain confidentiality as discussed above. We will calculate the aggregate 6- and 12-month totals from the information in the monthly reports received from all reporting packers and report the aggregates on a regional basis as listed below. We will use the same regions for reporting the monthly report estimate aggregates as described above for the summaries of contract terms from the contract library.

What regions will GIPSA use for reporting? The information we make available will be presented on a regional basis, as specified in sections 206.2(f) and 206.3(g)(2) of the regulations. Among the factors we will consider in defining a region are: (1) Relevant marketing areas; (2) statutory requirements to maintain confidentiality and protect proprietary business information; and (3) AMS definitions of regions in its reports of swine prices.[11]

For example, we will review the AMS regions for which AMS reports hog prices. If we determine that we can provide more information by splitting an AMS region into more than one region, then we will determine whether the information can be presented for smaller regions and maintain confidentiality. Alternately, if we determine that releasing information for an AMS region will not maintain confidentiality, then we will aggregate the information into larger regions that will maintain confidentiality.

In order to ensure confidentiality, information will only be published if it is obtained from no fewer than three packers, and no packer represents a dominant portion of the region's total slaughter based on market share. The specific factor used to determine if a packer is dominant in the region will not be released, to further assure confidentiality by preventing anyone from using knowledge about the factor to reveal information that we will withhold. In any region or set of circumstances that leads us to be concerned about our ability to publish information while maintaining confidentiality, in addition to the expertise provided by GIPSA economists and industry experts, we will consult with USDA statisticians to ensure that confidentiality is maintained.

To further maintain confidentiality and provide useful information, we may change the regions over time. Initially, based on our analysis of swine processing plants and the AMS regions, the information will be published for the regions listed below:

- The Western U.S. region includes all states west of the Mississippi River.
- The Western Cornbelt region includes Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. (This region will also be included in the Western U.S. region.)
- The Iowa/Minnesota region includes Iowa and Minnesota. (This region will also be included in the Western Cornbelt region.)
- The Eastern Cornbelt region includes all states east of the

[11] Even with the differences between he contract information we report and prices reported by USDA AMS Market News, producers and other interested parties will be able to review the information for consistent regions to understand contract terms and prices paid for hogs purchased through various methods.

Mississippi River. (This region is the eastern half of the country, but is named Eastern Cornbelt for consistency with AMS regions.)

We will monitor changes in the swine industry, feedback from producers and other interested parties about the summary reports, and other relevant information to determine if changes in reporting regions need to be considered.

How will GIPSA make summary example contract and monthly report information available? As specified in sections 206.2(g) and 206.3(g)(1) of the regulations, we will make the contract library information and monthly reports available on the Internet on the GIPSA Web site at *http://www.usda.gov/gipsa/* and at the GIPSA Regional Office in Des Moines, Suite 317, 210 Walnut Street, Des Moines, IA 50309. The information available from the GIPSA Web site and at the regional office will be the same.

Initially, summarized information from example contracts could be available as early as 2 months after the final rule becomes effective (30 days after packers will be required to submit example contracts for each of the plants that has the slaughtering capacity specified in the definition of ''packer'' as specified in section 206.1). Subsequent information on new example contracts made available by packers will be available on a real-time basis, to the extent possible (packers must send GIPSA new example contracts within one business day of the contract being made available). The method and time of delivery and the complexity of contract terms will determine how quickly GIPSA can make the information available. Initially, summarized monthly report information could be available as early as 3 months after the final rule becomes effective (the first day of the month following packers' first monthly report submission.). Subsequent summarized monthly reports will be available the 1st of each month (2 weeks following the packers' monthly report submission).

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be significant for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget. The following is an economic analysis of the rule that includes the cost-benefit analysis required by Executive Order 12866. The economic analysis also provides a final regulatory flexibility analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601—612).

This rule implements Subtitle B of Title II of the P&S Act, which requires packers to report to the Secretary information for swine packing plants that have the slaughtering capacity specified in the subtitle's definition of ''packer.'' The rule requires the reporting of information on swine marketing contracts by packers for plants that have the slaughtering capacity specified in the definition of ''packer.''

Each packer purchasing at least 100,000 swine per year must report information for swine processing plants it owns or at which it has swine slaughtered that slaughtered an average of 100,000 head of swine per year during any of the immediately preceding 5 calendar years based on those years in which the plant slaughtered swine. Based on data including 2002, the most recent year for which complete data are available, this includes a total of 53 plants owned or utilized by 33 swine packers.

The rule establishes a swine contract library and requires packers operating or utilizing plants of the specified slaughtering capacity to submit example contracts and monthly reports to provide numbers of swine committed to packers under contract. We believe that this information program will benefit producers, especially small producers. It will increase information available to producers about contract terms, as well as improve producers' and packers' ability to plan with improved knowledge of the volume of swine already contracted for slaughter.

Summary of Costs

No costs will be imposed on producers as a result of the regulations. Monthly reports and information from the contract library on contract terms will be available on the GIPSA Web site on the Internet. Producers with Internet access will be able to access the reports at no additional cost beyond their normal Internet costs. We believe that many producer organizations and private news and information services will copy and redistribute these reports at no direct cost to producers as part of the services they already provide to producers.

Packers required to report will face costs associated with submitting contracts for the contract library. The first component of these costs is the initial cost of compiling and providing to GIPSA a copy of each example contract currently in effect or available at each plant that has the slaughtering capacity specified in the definition of ''packer'' in section 206.1. As specified in the definition of ''contract'' in section 206.1, this term includes written and verbal agreements. To submit example contracts for verbal agreements, packers will need to provide written descriptions of the verbal agreement. The second component is the cost of providing a copy of each new example contract subsequently made available by the packer. We estimate the hourly cost of these activities will average $20 per hour.

Based on our experience reviewing swine contracts in the normal course of enforcing the P&S Act, we believe that the time required for a packer to review its contracts, identify example contracts, and submit those examples as a package (including documenting verbal contracts) will average 9 hours per plant for the initial submission.

The first component of the 9 hours is an initial 4 hours to review the files of contracts and identify examples of existing and available contracts. Packers must identify which contracts are identical for reporting purposes, as specified in section 206.2(d) of the regulations, in order to determine which contracts need to be sent as examples.

The second component of the 9 hours is an additional 5 hours to collect and submit example contracts to GIPSA. This is composed of 0.5 hours per plant per example contract; we increased this estimate from the 0.25 hours estimated in the proposed rule to allow extra time for packers to review the guidelines developed for the submission of example contracts and the time to submit the example contracts electronically. Based on our experience reviewing swine contracts, we have determined that some packers will only have one example contract to report for each plant, while other packers will have a variety of example contracts. For this analysis and to provide an upper estimate for the costs associated with the contract library, we estimated that, on average, packers would have 10 example contracts per plant to be submitted to GIPSA for the initial filing. At 0.5 hours per plant per example contract, it would take 5 hours for the packer to collect and submit the 10 example contracts to GIPSA.

The total one-time cost to compile the initial submission of example contracts for all 53 plants [12] is $9,540 ($180 per plant × 53 plants, which combines the first component of $20 per hour × 4 hours = $80 and the second component of $20 per hour × 0.5 hours × 10

[12] The regulation will require a total of 33 pork packing companies (packers) to report for 53 plants that have the slaughtering capacity specified in the definition of ''packer'' in section 206.1, based on data including 2001, the most recent year for which complete data are available.

example contracts = $100 per plant). There should be no additional cost for electronic submission because the submission will be through a secure Web site, which will be at no additional cost to those packers that have Internet access.

After the initial submission, we estimate an average of about 2.5 hours per year per plant will be required to submit an average of 5 examples of new contracts or changes to previously submitted example contracts, at a cost per plant of $25.00 per year ($20/hour × 2.5 hours = $50). In months when a packer does not have a new contract or modify a previously submitted example contract, there will be no cost of compliance with contract library reporting requirements. Packers must notify GIPSA within one business day when one of its example contracts no longer represents any existing or available contracts. The costs for this notification are included in the estimate for changes to previously submitted contracts. The total annual recurring cost for all 53 plants for the submission of examples of contract types is estimated to be $2,650 ($50 per plant × 53 plants).

Packers also face costs in complying with the monthly reporting requirements. We believe that many packers already maintain the required information electronically for use in business and strategic planning. Based on our investigations and reviews of packers, we believe that all packers that are large enough to meet the statutory requirements for reporting already use computers.[13] Therefore, we do not anticipate that the packers will incur any additional costs for computer hardware to implement electronic submissions of monthly reports. For those packers that use computers but do not currently maintain contract information electronically, we estimate that at most 1 hour per plant, at an hourly cost of $50.00, will be required to set up a database or spreadsheet to maintain the necessary information. This estimate is based on our experience with spreadsheets and databases that are similar in type and complexity. The higher hourly wage rate for this activity is based on the use of personnel with specialized skills necessary to set up spreadsheets or databases. The creation of spreadsheets or databases to maintain the necessary information can be accomplished by in-house computer staff, or by other employees such as accountants or auditors who are responsible for operating the packer's electronic recordkeeping system. The total one-time cost for packers to set up a database or spreadsheet to maintain information for the monthly report for all 53 plants is estimated to be $2,650 ($50 per plant × 53 plants) if packers choose to submit reports electronically for all 53 plants.

An additional 2 hours per plant, at the estimated hourly cost of $50.00 per hour for a total one-time cost of $100.00 per plant, will be required for personnel with similar skills in use of electronic recordkeeping systems to extract and format the required information from the packer's electronic information and develop methods for electronic transmission of the completed reports to GIPSA. Upon request, we will provide the necessary information for the interface to our system. Packers that do not use electronic data transmission will not incur this initial set-up cost, but will not gain the advantage of potential savings from electronic recordkeeping and reporting as described below. The total one-time cost for packers to extract and format information and develop methods for electronic transmission for the monthly report for all 53 plants is estimated to be $5,300 ($100 per plant × 53 plants) if the packers choose to submit reports electronically for all 53 plants.

Once a recordkeeping and reporting system is established, additional time will be required to enter data into the database or spreadsheet each month. Packers that choose not to use an electronic system for maintaining and compiling data required for the monthly reports will manually compile the data on paper forms each month; the forms will be available from the Des Moines regional office. The total time required for either method will depend on the number of contracts in effect.

Based on our experience in working with similar documents and data entry processes, we estimate that it will take an average of 2 hours per month per plant to manually compile and report the figures needed for the monthly reporting provision. The initial monthly report may take somewhat longer than 2 hours.

We estimate the cost per hour of this activity will average $20.00 per hour, for a total monthly cost per plant of $40.00 ($20 per hour × 2 hours = $40). A packer using an electronic system to compile reports will face lower monthly compliance costs than a packer that does not use an electronic system. We estimate that a packer utilizing electronic systems will take an average of 1 hour per month per plant at a total cost per plant of $20.00 to compile and report the monthly estimates. The total annual recurring cost per plant to compile and submit the monthly report is $480 ($40 per month × 12 months) if the packer chooses to submit reports manually or $240 ($20 per month × 12 months) if the packer chooses to submit reports electronically. The total annual recurring cost for all 53 plants to compile and submit the monthly report is estimated to be $25,440 ($480 per plant × 53 plants) if the packers choose to submit reports manually for all 53 plants or $12,720 ($240 per plant × 53 plants) if the packers choose to submit reports electronically for all 53 plants.

The following table summarizes the estimated compliance costs for packers required to submit example contracts and monthly contract information for plants that are subject to the regulations in 9 CFR Part 206. As shown in the table, total first year costs for all 33 packers (53 plants) to comply with the requirements of the contract library and monthly reports is $37,630 if the packers choose to submit reports manually for all 53 plants or $32,860 if the packers choose to submit reports electronically for all 53 plants. The total first year costs include the start-up costs, therefore, the annual recurring costs will be lower and are estimated to be $28,090 if the packers choose to submit reports manually for all 53 plants or $15,370 if the packers choose to submit reports electronically for all 53 plants.

[13] Most, if not all, of these packers are required to use an electronic system to provide information to AMS under mandatory livestock price reporting requirements in the AMA (7 U.S.C. 1636(g)).

	Costs per plant, manual	Costs per plant, electronic monthly reports	Total costs if packers use manual methods for all 53 plants [1]	Total costs if packers use electronic methods for monthly reports for all 53 plants [1]
Start-Up Costs:				
Contract Library:				
Review contracts, identify example contracts (4 hours x $20.00/hr)	$80.00	$80.00	$4,240.00	$4,240.00
Collect and submit example contracts [2] (10 examples x 0.5 hr. x $20.00 per hour)	$100.00	$100.00	$5,300.00	$5,300.00
Monthly Report:				
Set up database or spreadsheet (1 hour x $50.00)	N/A	$50.00	N/A	$2,650.00
Development of transmission methods (2 hours x $50.00)	N/A	$100.00	N/A	$5,300.00
Total Start-Up Costs	$180.00	$330.00	$9,540.00	$17,490.00
Annual Recurring Costs:				
Contract Library: Collect and submit example contracts (5 examples x 0. 5 hr. x $20.00 per hour)	$50.00	$50.00	$2,650.00	$2,650.00
Monthly Report: Enter data into database or spreadsheet, or tabulate on paper, and compile totals:				
(Electronic: 1 hour per month x 12 x $20.00)	N/A	$240.00	N/A	$12,720.00
(Manual: 2 hours per month x 12 x $20.00)	$480.00	N/A	$25,440.00	N/A
Total Annual Recurring Costs	$530.00	$290.00	$28,090.00	$15,370.00
Total 1st Year Cost (Start-up costs plus annual recurring costs)	$710.00	$620.00	$37,630.00	$32,860.00

[1] Although we believe it is likely that most packers will use electronic methods, we do not have a basis for estimating the actual number of packers that will choose to use electronic versus manual methods. Thus, estimates are shown for the alternatives of all manual submissions versus all electronic submissions to provide a range of the likely total costs to packers.

[2] We are not assuming any electronic submission of contracts for purposes of this analysis because it is likely that many of the plants will submit the information directly and the plants may not have the electronic version of the contracts.

GIPSA will incur costs of operating the swine contract library, analyzing the monthly reports submitted by packers, ensuring that packers are in compliance, and making the information available at the P&SP regional office and on the GIPSA Web site. We estimate that GIPSA will incur total costs of $400,000 per year for all activities, specified below, associated with implementing the swine contract library. We will monitor and review contracts submitted for the contract library and monthly reports filed by packers to assure completeness, consistency, and accuracy. In addition, we will conduct ongoing analyses of the data and information obtained from packers, and will explore ways to increase the usefulness of the published data and information. Our projected costs include communication costs, travel expense for plant visits to monitor compliance with the swine contract library sections of the P&S Act and regulations, costs for office supplies, computer hardware and software acquisition and maintenance.

We anticipate that our costs for providing assistance to packers and maintaining the contract library will decrease over time. As a packer becomes familiar with the regulations, it will need less assistance from us. Once the analysis of the initial submission of contracts is complete, there will be fewer contracts received for analysis.

Summary of Benefits

The primary economic benefit of the contract library to producers will be to alleviate some of the current imbalance in information between producers and packers by increasing the amount of information available to producers and to provide producers the potential to improve overall production planning and marketing efficiency. Many producers report that they cannot currently obtain the information needed to compare contracts available from different packers. Producers may have very limited information, especially about contracts and contracting practices, since producers are parties to fewer contracts and have fewer resources for searching out this information than do packers. Based on GIPSA's contacts with producers, we believe that most producers currently do not search out contract terms among competing packers. Rather, they tend to contract with and deliver their hogs to a single packer. Producers have indicated to GIPSA that they do not have enough knowledge about contract terms available to them to encourage them to search out more favorable terms.

This rule will make information about the variety and types of contract terms available in the marketplace, as well as the number of swine committed under contract by region, readily and easily available from a single source. Availability of information from example contracts and monthly reports will serve to lower the search costs for producers and enable producers to be more informed before entering the marketplace.

This increased information will be beneficial to producers in making production plans and determining how to market swine. The increased information about which contract types and contract terms are available will enable producers to understand the particular terms that are available. For example, different packers often have different requirements for swine with given carcass characteristics, and the packers' premiums and discounts reflect the unique requirements.[14] The information from the contracts will make producers aware of contract terms that better match the characteristics of

[14] For example, one analysis found that net prices paid by different packers for the same quality of hogs varied by up to $2.00 per hundredweight. (''Factors That Influence Prices Producers Receive for Hogs: Statistical Analysis of Kill Sheet and Survey Data,'' John D. Lawrence, Staff Paper No. 279, Iowa State University. March 1996.)

the swine they produce. Although the contract information will not identify which packers have specific contract terms available, producers will know that specific terms are available at a plant in identified regions.

Additionally, the monthly reports will provide producers with information on the number of contracted swine by region for the upcoming 6- and 12-month periods. Producers could use this information, in combination with data such as current inventories of swine on feed from the National Agricultural Statistics Service and projections of slaughter from land grant college extension services and other sources, to estimate the percentage of the region's swine slaughter requirements for the next 6 and 12 months that are being met by contracted swine. This will help producers to determine how many sows to breed, whether to search out packers in regions with lower volumes of swine already contracted, and to make other decisions related to the production and marketing of their swine. For example, knowledge of the volume of swine already contracted for delivery 12 months into the future will better enable producers to adjust their production plans to avoid situations such as occurred during a prolonged period in late 1998. During that period, extremely large supplies of swine for slaughter were out of balance with aggregate industry slaughter capacity and producers suffered losses in the billions of dollars.

By lowering the search costs for producers and increasing the amount of available information, information made available from example contracts and the monthly reports will alleviate much of the current imbalance in information available to producers relative to packers. The benefits are difficult, if not impossible, to quantify, but available evidence indicates the benefits will be substantial. We believe that benefits to producers, from the availability of contract terms and packers' estimates of future deliveries, will include better planning for their marketing decisions.

We envision that the primary means of access to information from the example contracts and monthly reports will be through the GIPSA Web site on the Internet. The information will also be available in hard copy in our regional office located in Des Moines, Iowa. We believe that many producers have access to the Internet; for those who do not, we have coordinated with other USDA agencies with officers at the local level to provide Internet access, or producers could use public libraries with Internet service available, as many across the country do. Therefore, this method of providing the information will make it available to the widest possible audience in the most efficient way. We believe that many producer organizations and private news and information services will copy and redistribute these reports at no direct cost to producers as part of the services they already provide to producers.

Although packers will bear the compliance costs of the regulations, packers are not the primary beneficiaries of the contract library. The chief benefit to the packers will be from improved knowledge about aggregate supply based on information provided in the monthly reports of aggregate future supplies of swine contracted for slaughter and knowledge of contract terms being made available by other packers.

In conclusion, the benefits to producers and other interested persons are not quantifiable and, therefore, difficult to compare to the costs that packers and GIPSA will incur to implement the swine contract library requirements of the amendments to the P&S Act. The total annual cost for GIPSA to implement the contract library and monthly reports is $400,000. The total first-year costs for packers choosing to utilize electronic submission methods is estimated to be $330 per plant with an annual recurring costs thereafter of an estimated $290 per plant; the total first-year cost for packers choosing to use manual submission methods is estimated to be $710 with an annual recurring cost thereafter estimated at $530 per plant. We believe all packers required to report have the capability to use electronic methods. However, we do not have an estimate for how many packers will choose to use electronic versus manual methods. Thus, for purposes of comparing costs and benefits, we are conservatively using the highest cost, which is based on all packers using manual methods to submit example contracts and monthly reports. Using this conservative estimate, the total first-year cost to the industry is $37,630 and annual recurring cost thereafter is $28,090. We requested comments on these estimates and on the likelihood that packers will use electronic methods; none of the commenters provided this information. Additionally, the benefits to the producer will be an increase in the knowledge about supply and contract terms that could result in better marketing decisions. These benefits are difficult, if not impossible, to quantify. We requested commenters to provide additional information on the benefits of this regulation and the quantification of those benefits; none of the commenters provided any additional information.

Effects on Small Entities

The Small Business Administration (SBA) classifies producers' swine production enterprises as small businesses if they have annual sales of $500,000 or less. There were approximately 92,000 producers that would be classified as small businesses by this definition, or 90 percent of all producers reporting sales of swine in the 1997 Census of Agriculture. The rule will not impose any reporting requirement or other burden on producers of any size. We believe the rule will provide significant benefits for all producers, as discussed in the section on Summary of Benefits above, and especially to small producers.

According to the SBA size standard, a company that owns and operates a packing plant, including a swine processing plant, would be classified as a small business if the company has less than 500 employees in total. It is common in the red meat industry for larger companies to own several plants. A packer that owns and operates one or more plants would be considered as a small business under the SBA definition only if the packer, at all plants combined, had fewer than 500 employees.

The regulation will require a total of 33 pork packing companies (packers) to report for 53 plants that have the slaughtering capacity specified in the definition of ''packer'' in section 206.1. We have minimized the number of small entities that would have been required to comply with the swine contract library regulations as proposed by limiting the packers to those that purchase at least 100,000 swine per year. Based on the SBA size standard, approximately 15 of the packers that will be required to report, are considered small businesses. These small packers will bear some costs of compliance with the regulation. The costs, as described above in Summary of Costs, arise from the reporting and recordkeeping requirements for the packers that are required to report. The same requirements will be imposed on large and small packers that are required to report. However, we believe the burden of these requirements will be less on the packers classified as small businesses, as explained below.

Projected Reporting Burden on Small Entities

The rule requires packers to report two types of information regarding contracts for the purchase of swine for slaughter. The first type is an example

of each contract (called an ''example contract'') currently in effect or available by packers at each plant required to report under section 206.1. Packers must provide an initial submission of example contracts for existing and available contracts and subsequent submissions of example contracts for new contracts. A copy of an example contract will only be submitted once for each plant. Based on prior contacts with packers by GIPSA personnel during the normal course of enforcing the P&S Act, we believe that small packers have a relatively small number of example contracts that will have to be submitted. Packers will submit example contracts by mail, electronic data transmission, or another method that is convenient for them and approved by GIPSA. We will use the information in these contracts to prepare a report for public release that will describe the contract types and contract terms existing or available, but will not identify individual packers of any size, or release copies of actual individual contracts used by any packer. We will make the report with the information from the example contracts available on the Internet and at our regional office located in Des Moines, Iowa.

The second type of information reported by packers will consist of a monthly report of the number of swine committed for delivery under each type of existing contract. The form for the monthly report will consist of up to 196 separate fields of information, including report date, packer, plant identification, and certification information (16 fields); swine delivery estimates for 6 contract type categories for each of the next 12 months (up to 144 fields for committed and maximum estimates); yes or no for any currently available contracts under a category of contract type (up to 6 fields); codes for the types of expansion clauses in existing contracts to increase swine deliveries to the maximum estimate (up to 6 fields); and the dates for which the estimates are provided (24 fields). A packer will fill out 196 fields of information for a plant that had one or more contracts under each of the six contract types. Packers must report this information once each month for each plant for which it is required to report under the regulations. If 196 fields of information were required per submission, a packer will report up to 196 pieces of information each month for each plant. However, few if any packers will have contracts of such variety as to be required to complete all fields on any given monthly report. We expect that the average monthly report of packers of any size will require entry of data into 68 to 94 fields. Packers will compile and aggregate data from individual contracts to enter into these fields. Small packers that meet the minimum purchasing and slaughtering capacity required for reporting are expected to have a smaller number of contracts from which to compile data. Therefore, the total reporting burden for smaller packers should be less than for the larger packers.

We encourage packers to utilize electronic data transmission to submit the required information to GIPSA. We will provide packers the necessary information on procedures to submit the data to GIPSA electronically. We expect that packers will use a variety of methods to provide the data to GIPSA. For electronic data transmission, we will provide a secure system to allow packers to submit data via the Internet through the GIPSA Web site.

Those small packers that choose not to use electronic submission methods for example contract information and monthly reports can send the information via facsimile or mail to GIPSA. However, a packer will have to meet the submission deadlines regardless of the method used for submission.

Projected Recordkeeping Burden on Small Entities

Each packer that is required to report information is required to maintain such records as are necessary to compile the information reported and verify its accuracy. Current P&S Act recordkeeping requirements are set out in 7 U.S.C. 221, 9 CFR 201, and 9 CFR 203.4. This rule does not require maintenance of records beyond those that packers are already required to maintain. Therefore, the rule does not create new, unduly burdensome recordkeeping requirements. Professional skills required for recordkeeping under the rule are no different than those already employed by the reporting entities. However, packers may need to extract and format the required information for submissions to GIPSA. We believe the skills needed to maintain such records are already in place at those small packers affected by the rule.

Alternatives

We considered alternative methods by which the objectives of the statute and implementing regulations could be accomplished. The regulations, as mandated by the Livestock Mandatory Reporting Act, require packers that own or use swine packing plants that slaughter a specified number of swine each year to provide certain information to the Secretary. There were few feasible alternatives possible with regard to obtaining the required information.

In the proposed rule, we required any packer, regardless of size, to comply with the swine contract library requirements if the packer used a plant that met the slaughter capacity specified in the definition of packer in section 201.1 of the regulations. However, there are a number of small packers that buy small amounts of swine and have the swine custom slaughtered at a plant large enough to require the packer to report. To eliminate the potential burden on such small packers, we revised the rule to add a minimum annual purchase of 100,000 swine to the definition of ''packer.'' Therefore, these small packers are not covered by the swine contract library regulations.

The example contract requirement for filing contract types in use could be accomplished by requiring that packers file copies of all contracts, not just example contracts. However, we believe this would result in an overwhelming and unnecessary paperwork burden for both packers and GIPSA. It would require all packers required to report to submit multiple copies of the same contract. It would also require a significant increase in expense to the government for the time required to review and classify all the contracts received.

The monthly report requirement could be accomplished by GIPSA compiling all data necessary for the monthly report to determine each individual packer's projected deliveries of swine for slaughter for the following 6- and 12-month periods. This alternative would require that we also implement the first alternative discussed above (that is, require packers to file all contracts) for GIPSA to have the necessary details to compile the data each month. In addition to the cost to the government of collecting all contracts, it would add significant additional costs to the government to tabulate data each month from all contracts submitted by packers.

We also considered the option of requiring electronic submission of the information required in the monthly report. Under the P&S Act, packers are required to submit information on various forms, and packers are used to submitting the information via facsimile or mail. Therefore, we decided to consider that a packer would expect to submit this information in the same format in which it submits other information. Probably all of the packers that will be required to submit information for the swine contract

library will have the capability to submit the required information electronically. The required information will be plant level information and some packers may choose to have the plant submit the information directly to GIPSA. Even though the packer may have the capability to submit information electronically, that capability may not exist at each of the plants. In addition, the option that we developed for the electronic submission of monthly reports is via data entry into an automated form on the Web site on the Internet; the automated form is the same as the hard copy form. We believe that the collection of this information would be most successful by providing a variety of options for submission. Therefore, in developing these regulations, we decided that the reporting objectives could be accomplished by allowing packers to report the required information by facsimile or mail if they choose not to use electronic submission. Although we will encourage packers to utilize electronic data transmission, and we will provide to packers the necessary information on procedures to submit data to GIPSA electronically, we expect that packers will use a variety of methods to provide the data to GIPSA. For electronic data transmission, we will provide a secure system to allow packers to submit data via the Internet through the GIPSA Web site.

In conclusion, as shown above, it is difficult to quantify all of the economic impacts on small entities based on the alternative submission methods that small packers may choose and the anticipated benefits, especially for small producers. Small packers will incur the costs of complying with these regulations; however, only 15 small packers, representing a small percentage of all small packers in the United States, would be required to comply with these regulations because these 15 packers purchase more than 100,000 swine annually and have swine slaughtered at a slaughtering plant that slaughtered an average of more than 100,000 swine per year. We believe that all of the approximately 92,000 small producers will accrue benefits at little or no cost. Therefore, we believe that the balance of the economic impact on small entities will be positive.

Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This rule will not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0580–0021.

GPEA Compliance

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 9 CFR Part 206

Swine, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, GIPSA amends 9 CFR Chapter II as follows:

■ 1. Add Part 206 to read as follows:

PART 206—SWINE CONTRACT LIBRARY

Sec.
206.1 Definitions.
206.2 Swine contract library.
206.3 Monthly report.

Authority: Sec. 941, Pub. L. 106–78, 113 Stat. 1135; 7 CFR 2.22 and 2.81.

§ 206.1 Definitions.

The definitions in this section apply to the regulations in this part. The definitions in this section do not apply to other regulations issued under the Packers and Stockyards Act (P&S Act) or to the P&S Act as a whole.

Accrual account. (Synonymous with ''ledger,'' as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Base price. The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit.

Contract. Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine for slaughter, except a negotiated purchase (as defined in this section).

Contract type. The classification of contracts or risk management agreements for the purchase of swine committed to a packer, by the determination of the base price and the presence or absence of an accrual account or ledger (as defined in this section). The contract type categories are:

(1) Swine or pork market formula purchases with a ledger,

(2) Swine or pork market formula purchases without a ledger,

(3) Other market formula purchases with a ledger,

(4) Other market formula purchases without a ledger,

(5) Other purchase arrangements with a ledger, and

(6) Other purchase arrangements without a ledger.

Formula price. A price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

Ledger. (Synonymous with ''accrual account,'' as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Negotiated purchase. A purchase, commonly known as a ''cash'' or ''spot market'' purchase, of swine by a packer from a producer under which:

(1) The buyer-seller interaction that results in the transaction and the agreement on actual base price occur on the same day; and

(2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the swine are committed to the packer.

Noncarcass merit premium or discount. An increase or decrease in the price for the purchase of swine made available by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.

Other market formula purchase. A purchase of swine by a packer in which the pricing determination is a formula price based on any market other than

the markets for swine, pork, or a pork product. The pricing determination includes, but is not limited to:

(1) A price formula based on one or more futures or options contracts;

(2) A price formula based on one or more feedstuff markets, such as the market for corn or soybeans; or

(3) A base price determination using more than one market as its base where at least one of those markets would be defined as an ''other market formula purchase.''

Other purchase arrangement. A purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase, and does not involve packer-owned swine.

Packer. Any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part only apply to a packer purchasing at least 100,000 swine per year and slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions:

(1) A swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine; or

(2) Any swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years that has the capacity to slaughter at least 100,000 swine per year, based on plant capacity information.

Producer. Any person engaged, either directly or through an intermediary, in the business of selling swine to a packer for slaughter (including the sale of swine from a packer to another packer).

Swine. A porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

Swine or pork market formula purchase. A purchase of swine by a packer in which the pricing determination is a formula price based on a market for swine, pork, or a pork product, other than a futures contract or option contract for swine, pork, or a pork product.

§ 206.2 Swine contract library.

(a) *Do I need to provide swine contract information?* Each packer, as defined in § 206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity specified in the definition of packer in § 206.1.

(b) *What existing or available contracts do I need to provide and when are they due?* Each packer must send, to the Grain Inspection, Packers and Stockyards Administration (GIPSA), an example of each contract it currently has with a producer or producers or that is currently available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1. This initial submission of example contracts is due to GIPSA on the first business day of the month following the determination that the plant has the slaughtering capacity specified in the definition of packer in § 206.1.

(c) *What available contracts do I need to provide and when are they due?* After the initial submission, each packer must send GIPSA an example of each new contract it makes available to a producer or producers within one business day of the contract being made available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1.

(d) *What criteria do I use to select example contracts?* For purposes of distinguishing among contracts to determine which contracts may be represented by a single example, contracts will be considered to be the same if they are identical with respect to all of the following four example-contract criteria:

(1) Base price or determination of base price;

(2) Application of a ledger or accrual account (including the terms and conditions of the ledger or accrual account provision);

(3) Carcass merit premium and discount schedules (including the determination of the lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied); and

(4) Use and amount of noncarcass merit premiums and discounts.

(e) *Where and how do I send my contracts?* Each packer may submit the example contracts and notifications required by this section by either of the following two methods:

(1) *Electronic report.* Example contracts and notifications required by this section may be submitted by electronic means. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit example contracts electronically, contact GIPSA through the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

(2) *Printed report.* Each packer that chooses to submit printed example contracts and notifications must deliver the printed contracts and notifications to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

(f) *What information from the swine contract library will be made available to the public*? GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will make the information available by region and contract type as defined in § 206.1, for public release one month after the initial submission of contracts. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality in accordance with section 251 of the Agricultural Marketing Act (7 U.S.C. 1636).

(g) *How can I review information from the swine contract library*? The information will be available on the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309. The information will be updated as GIPSA receives information from packers.

(h) *What do I need to do when a previously submitted example contract is no longer a valid example due to contract changes, expiration, or withdrawal*? Each packer must submit a new example contract when contract changes result in changes to any of the four example-contract criteria specified in paragraph (d) of this section and notify GIPSA if the new example contract replaces the previously submitted example contract. Each packer must notify GIPSA when an example contract no longer represents any existing or available contract (expired or withdrawn). Each packer must submit these example contracts and notifications within one business day of the change, expiration, or withdrawal.

(Approved by the Office of Management and Budget under control number 0580–0021)

§ 206.3 Monthly report.

(a) *Do I need to provide monthly reports*? Each packer, as defined in § 206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering

capacity specified in the definition of packer.

(b) *When is the monthly report due*? Each packer must send a separate monthly report for each plant that has the slaughtering capacity specified in the definition of packer in § 206.1. Each packer must deliver the report to the GIPSA Regional Office in Des Moines, IA, by the close of business on the 15th of each month, beginning at least 45 days after the initial submission of example contracts. The GIPSA Regional Office closes at 4:30 p.m. Central Time. If the 15th day of a month falls on a Saturday, Sunday, or federal holiday, the monthly report is due no later than the close of the next business day following the 15th.

(c) *What information do I need to provide in the monthly report*? The monthly report that each packer files must be reported on Form P&SP–341, which will be available on the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309. In the monthly report, each packer must provide the following information:

(1) *Number of swine to be delivered under existing contracts.* Existing contracts are contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must provide monthly estimates of the number of swine committed to be delivered under all of its existing contracts (even if those contracts are not currently available for renewal or to additional producers) in each contract type as defined in § 206.1.

(2) *Available contracts.* Available contracts are the contracts the packer is currently making available to producers, or is making available for renewal to currently contracted producers, for the purchase of swine for slaughter at each plant. On the monthly report, a packer will indicate each contract type, as defined in § 206.1, that the packer is currently making available.

(3) *Estimates of committed swine.* Each packer must provide an estimate of the total number of swine committed under existing contracts for delivery to each plant for slaughter within each of the following 12 calendar months beginning with the 1st of the month immediately following the due date of the report. The estimate of total swine committed will be reported by contract type as defined in § 206.1.

(4) *Expansion clauses.* Any conditions or circumstances specified by clauses in any existing contracts that could result in an increase in the estimates specified in paragraph (c)(3) of this section. Each packer will identify the expansion clauses in the monthly report by listing a code for the following conditions:

(i) Clauses that allow for a range of the number of swine to be delivered;

(ii) Clauses that require a greater number of swine to be delivered as the contract continues;

(iii) Other clauses that provide for expansion in the numbers of swine to be delivered.

(5) *Maximum estimates of swine.* The packer's estimate of the maximum total number of swine that potentially could be delivered to each plant within each of the following 12 calendar months, if any or all of the types of expansion clauses identified in accordance with the requirement in paragraph (c)(4) of this section are executed. The estimate of maximum potential deliveries must be reported for all existing contracts by contract type as defined in § 206.1.

(d) *What if a contract does not specify the number of swine committed*? To meet the requirements of paragraphs (c)(3) and (c)(5) of this section, the packer must estimate expected and potential deliveries based on the best information available to the packer. Such information might include, for example, the producer's current and projected swine inventories and planned production.

(e) *When do I change previously reported estimates*? Regardless of any estimates for a given future month that may have been previously reported, current estimates of deliveries reported as required by paragraphs (c)(3) and (c)(5) of this section must be based on the most accurate information available at the time each report is prepared.

(f) *Where and how do I send my monthly report*? Each packer may submit monthly reports required by this section by either of the following two methods:

(1) *Electronic report.* Information reported under this section may be reported by electronic means, to the maximum extent practicable. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit information electronically, contact GIPSA through the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

(2) *Printed report.* Each packer may deliver its printed monthly report to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

(g) *What information from monthly reports will be made available to the public and when and how will the information be made available to the public*?

(1) *Availability.* GIPSA will provide a monthly report of estimated deliveries by contract types as reported by packers in accordance with this section, for public release on the 1st business day of each month. The monthly reports will be available on the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309, during normal business hours of 7 a.m. to 4:30 p.m. Central Time, Monday through Friday.

(2) *Regions.* Information in the report will be aggregated and reported by geographic regions. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality in accordance with section 251 of the Agricultural Marketing Act (7 U.S.C. 1636) and may be modified from time to time.

(3) *Reported information.* The monthly report will provide the following information:

(i) The existing contract types for each geographic region.

(ii) The contract types currently being made available to additional producers or available for renewal to currently contracted producers in each geographic region.

(iii) The sum of packers' reported estimates of the total number of swine committed by contract for delivery during the next 6 and 12 months beginning with the month the report is published. The report will indicate the number of swine committed by geographic reporting region and by contract type.

(iv) The types of conditions or circumstances as reported by packers that could result in expansion in the numbers of swine to be delivered under the terms of expansion clauses in the contracts at any time during the following 12 calendar months.

(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion clauses in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by contract type.

(Approved by the Office of Management and Budget under control number 0580–0021)

Dated: August 5, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–20374 Filed 8–8–03; 8:45 am]

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Federal Register

Monday,
August 11, 2003

Part V

The President

Notice of August 7, 2003—Continuation of Emergency Regarding Export Control Regulations

Federal Register
Vol. 68, No. 154
Monday, August 11, 2003

Presidential Documents

Title 3—

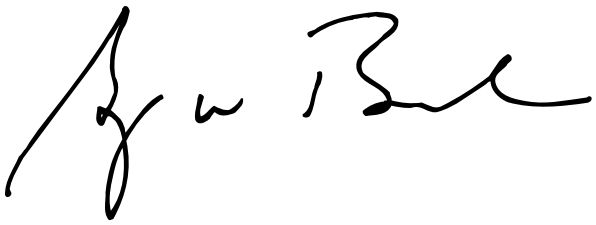
The President

Notice of August 7, 2003

Continuation of Emergency Regarding Export Control Regulations

On August 17, 2001, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 170l *et seq.*), I issued Executive Order 13222. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on August 17, 2001, and renewed on August 14, 2002, must continue in effect beyond August 17, 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 declared in Executive Order 13222.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
August 7, 2003.

[FR Doc. 03–20569
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Federal Aviation Administration

Airworthiness directives:
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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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Special conditions—
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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness standards:
Special conditions—
Boeing Model 747SP airplane; comments due by 8-21-03; published 7-22-03 [FR 03-18625]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class D airspace; comments due by 8-21-03; published 7-22-03 [FR 03-18515]
Class D and Class E4 airspace; comments due by 8-18-03; published 7-17-03 [FR 03-18074]

TRANSPORTATION DEPARTMENT

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Class E airspace; comments due by 8-20-03; published 7-9-03 [FR 03-17253]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Private activity bonds; definition; comments due by 8-19-03; published 5-14-03 [FR 03-11926]
Qualified retirement plans; deemed IRAs; comments due by 8-18-03; published 5-20-03 [FR 03-12675]

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. 74/P.L. 108–67

To direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California. (Aug. 1, 2003; 117 Stat. 880)

S. 1280/P.L. 108–68

To amend the PROTECT Act to clarify certain volunteer liability. (Aug. 1, 2003; 117 Stat. 883)

Last List August 1, 2003

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4] Jan. 1, 2003
3 (1997 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1] Jan. 1, 2003
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
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7 Parts:			
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53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
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8	(869–050–00022–9)	58.00	Jan. 1, 2003
9 Parts:			
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10 Parts:			
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11	(869–050–00029–6)	38.00	Jan. 1, 2003
12 Parts:			
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220–299	(869–050–00032–6)	58.00	Jan. 1, 2003
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29 Parts:			
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CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.