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Monday
September 13, 1999



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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–99–12]

Notice of Opportunity to Request a Soybean Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of opportunity to request referendum.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that soybean producers may request a referendum to determine if producers want a referendum on the Soybean Promotion and Research Order (Order) as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act).

If at least 10 percent (not in excess of one-fifth of which may be producers in any one State) of the 600,813 eligible producers as determined by the Department of Agriculture (Department) nationwide participate in the Request for Referendum, a referendum will be held within 1 year from that determination. If results of the Request for Referendum indicate that a referendum is not supported, a referendum would not be conducted.

DATES: Soybean producers may request a referendum during a 4-week period beginning on October 20, 1999, and ending on November 16, 1999. Producers who certify that they were engaged in the production of soybeans anytime between January 1, 1997, and November 16, 1999, and who own or share the ownership and risk of loss of those soybeans are eligible to participate in the Request for Referendum.

Forms may be obtained by mail, fax, or in person from the Farm Service Agency (FSA) county offices from October 20, 1999, through November 16, 1999. Completed forms must be returned to FSA offices by fax or in person no later than November 16, 1999, or if returned by mail must be post marked by November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: In accordance with the Act (7 U.S.C. 6301 *et. seq.*), this Notice announces the dates when the Request for Referendum will be conducted and the place where soybean producers may request a referendum on the Order. The Order appears in the Code of Federal Regulations at 7 CFR Part 1220. The Act provides that the Secretary, 5 years after the conduct of the initial referendum, shall give soybean producers the opportunity to request an additional referendum on the Order. Individual producers and other producer entities will be provided the opportunity to request a referendum, at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum will be provided at the county FSA office serving the county where the producer owns or rents land. Participation in the Request for Referendum is not mandatory.

On August 20, 1999, the Department published in the **Federal Register** (64 FR 45413) a final rule that sets forth procedures the Department will use in conducting the Request for Referendum. The final rule includes definitions, provisions for supervising the process for requesting a referendum, eligibility, certification procedures for requesting the required forms, where the Request for Referendum will be conducted, counting forms, reporting results, and disposition of the forms and records. Since the Request for Referendum will be conducted at the county FSA offices, FSA employees will assist AMS by determining eligibility, counting ballots, and reporting results.

Pursuant to the Act the Department is conducting the required Request for Referendum from October 20, 1999, through November 16, 1999.

Producers who certify that they where engaged in the production of soybeans anytime between January 1, 1997, and November 16, 1999, and who own or share the ownership and risk of loss of those soybeans are eligible to participate in the Request for Referendum. Only those producers who are in favor of a referendum on the Order would participate.

Forms may be requested in person, by mail, or by facsimile from October 20, 1999, through November 16, 1999. Individual producers and other producer entities would request a referendum at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Completed forms must be postmarked, faxed, or returned in person no later than November 16, 1999.

The purpose of the Request for Referendum is to determine whether eligible producers favor the conduct of a referendum on the Order.

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et. seq.*], the information collection requirements made in connection with the Request for Referendum have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0093.

Authority: 7 U.S.C. 6301–6311.

Dated: September 8, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–23727 Filed 9–8–99; 4:04 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV99–923–1 FIR]

Sweet Cherries Grown in Designated Counties in Washington; Change in Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule without change, the provisions of an interim final rule changing the pack requirements currently prescribed under the Washington cherry marketing order. The marketing order regulates the handling of sweet cherries grown in designated counties in Washington and is administered locally by the Washington Cherry Marketing Committee (Committee). This rule finalizes the establishment of two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The two additional row count/row size designations are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter). This change will allow the Washington cherry industry to further differentiate cherries by row count/row size. The change is intended to provide handlers more marketing flexibility, clarify the choices available to buyers, and improve returns to producers.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 134 and Marketing Order No. 923 (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect changes to the pack requirements currently prescribed under the Washington cherry marketing order by establishing two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation.

Section 923.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety or varieties of cherries grown in any district or districts of the production area during any period or periods. Section 923.53 further authorizes the modification, suspension, or termination of regulations issued under 923.52.

Minimum grade, size, quality, maturity, container, and pack requirements for cherries regulated under the order are specified in 923.322. Paragraph (e) of that section provides that when containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and that at least 90 percent, by count, of the cherries in any lot shall not be smaller than the corresponding diameter shown in Column 2 of the table: *Provided,* That the content of individual containers in the lot are not limited as to the percentage of undersize; but the total of undersize of the entire lot shall be within the tolerance specified.

The following table shows the row count/row size designations prior to this change:

TABLE

Column 1, row count/row size	Column 2 diameter (inches)
9	75/64
9½	71/64
10	67/64
10½	64/64
11	61/64
11½	57/64
12	54/64

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington cherries which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation. The additional row count/row size designations are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter) and are shown in the following revised table from 923.322(e):

TABLE

Column 1, row count/row size	Column 2 diameter (inches)
8	84/64
8½	79/64
9	75/64
9½	71/64
10	67/64
10½	64/64
11	61/64
11½	57/64
12	54/64

When the row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8½ row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data shows an increase of $2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8½ row cherries will receive an additional $2 and $4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries produced and shipped is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size previously designated was 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row were not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Washington cherries who are subject to regulation under the marketing order and approximately 1,100 cherry producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 93 percent of the Washington cherry handlers ship under $5,000,000 worth of cherries and 7 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Washington cherry producers, the average annual grower revenue is approximately $100,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of Washington cherries may be classified as small entities.

This rule continues in effect changes to the pack requirements currently prescribed under the Washington cherry marketing order by establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The additional row count/row size designations are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter).

When the row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8½ row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size cherries will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger-sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data shows an increase of $2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8½ row cherries will receive an additional $2 and $4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size previously designated was 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row were not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will allow handlers to market larger cherries in containers designated with the larger row counts/row sizes. Accurate identification of the sizes packed in the containers is expected to benefit buyers. Further, this rule will allow handlers greater flexibility in marketing the Washington cherry crop.

The Committee did not discuss any alternatives to this rule, except not to allow the larger row count/row size designations for larger cherries. This was not acceptable because producers and handlers would not be able to reap the benefits expected from further differentiation of the larger sizes.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 13, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 15 members, of which 5 are handlers and 10 are producers, the majority of whom are small entities.

An interim final rule concerning this action was published in the **Federal Register** on June 24, 1999. A copy of the rule was mailed to the Committee's administrative office for distribution to producers and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended August 23, 1999. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 33741, June 24, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 923 which was published at 64 FR 33741 on June 24, 1999, is adopted as a final rule without change.

Dated: September 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–23791 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV99–947–1 FIR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in All Counties in Oregon, Except Malheur County; Temporary Suspension of Handling Regulations and Establishment of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule without change, the provisions of an interim final rule suspending, for the 1999–2000 season only, the minimum grade, size, quality, maturity, pack, and inspection requirements currently prescribed under the Oregon-California potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee (Committee). During this suspension of the handling regulations, reports from handlers will be required to obtain information necessary to administer the marketing order. This rule is expected to reduce industry expenses.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440 or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Marketing Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California, and in all counties in Oregon, except Malheur County, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule continues in effect the suspension of the handling regulations currently prescribed under the order from July 1, 1999, to June 30, 2000. This rule allows the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements. The handling regulations will resume July 1, 2000, for the 2000–2001 season and future seasons. This rule also establishes handler reporting requirements during the same time period. Reporting requirements will allow the Committee to obtain information from handlers necessary to administer the order.

Section 947.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety of potatoes grown in the production area during any period. Section 947.51 authorizes the modification, suspension, or termination of regulations issued under § 947.52.

Section 947.60 provides that whenever potatoes are regulated pursuant to § 947.52, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of inspection and certification is borne by handlers.

Section 947.80 authorizes the Committee, with the approval of the Secretary, to require reports and other information from handlers that are necessary for the Committee to perform its duties.

Minimum grade, size, quality, maturity, and pack requirements for potatoes regulated under the order are specified in § 947.340 *Handling Regulation* [7 CFR 947.340]. This regulation, with modifications and exemptions for different varieties and types of shipments, provides that all potatoes grade at least U.S. No. 2; be at least 2 inches in diameter or weigh at least 4 ounces; and be not more than moderately skinned. Additionally, potatoes packed in cartons must be U.S. No. 1 grade or better, with an additional

tolerance allowed for internal defects, or U.S. No. 2 grade weighing at least 10 ounces. Section 947.340 also includes waivers of inspection procedures, reporting and safeguard requirements for special purpose shipments, and a minimum quantity exemption of 19 hundredweight per day.

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Oregon-California potatoes which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its February 23, 1999, meeting, the Committee unanimously recommended suspending the handling regulations and establishing handler reporting requirements for the 1999–2000 season. The Committee met again on May 14, 1999, to review the recommendation made at the earlier meeting. After extensive discussion, the Committee decided not to rescind or modify their earlier recommendation to suspend handling regulations. The Committee requested that this rule be effective for the fiscal period beginning July 1, 1999, which is also the date shipments of the 1999 Oregon-California potato crop began.

The objective of the handling requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee has been discussing the possibility of reducing costs through the elimination of mandatory inspection. The Committee is concerned, however, that the elimination of current handling and inspection requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there is some concern that the Oregon-California potato industry could lose sales to other potato producing areas that are covered by quality and inspection requirements. For these reasons, the Committee recommended that the suspension of handling requirements be effective for the 1999–2000 season only. This will enable the Committee to study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements for the 1999–2000 season only. This rule will allow handlers to decrease costs by eliminating the costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will evaluate the effects of removing the minimum requirements on marketing and on producer returns at its meeting next spring.

The suspension of the handling regulations will result in the elimination of the monthly inspection report from the Federal-State Inspection Service which the Committee used as a basis for the collection of assessments from handlers. This inspection report was compiled by the Federal-State Inspection Service from inspection certificates. During the suspension of the handling regulations, reports from handlers will be needed for the Committee to obtain information on which to collect assessments. Therefore, a new § 947.180 *Reports* is established which requires each handler to submit a monthly assessment report to the Committee containing the following information: (a) The date and quantity of fresh potatoes sold including identification numbers; (b) the name and address of the producers; (c) the assessment payment due; and (d) the name and address of the handler. Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. Although adding reporting requirements, this rule through the elimination of inspection and certification requirements is expected to reduce industry expenses.

Consistent with the suspension of § 947.340, this rule also suspends §§ 947.120, 947.123, 947.130, 947.132, 947.133, and 947.134 of the rules and regulations in effect under the order. Sections 947.120 and 947.123 provide authority for hardship exemptions from inspection and certification, and establish reporting and recordkeeping requirements when such exemptions are in place. Sections 947.130, 947.132, 947.133, and 947.134 are safeguard and reporting provisions of the order that are applicable to special purpose shipments when inspection and certification requirements are in place.

Contained within § 947.340(i) of the current handling regulations is a minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the inspection and assessment requirements issued under the order. The suspension of the handling regulations removes all inspection requirements. To continue the current minimum quantity exemption for assessments, a new § 947.125 *Minimum quantity exemption* is established. This section simply continues the current minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the assessment requirements issued under the order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of Oregon-California potatoes who are subject to regulation under the marketing order and approximately 450 potato producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 83 percent of the Oregon-California potato handlers ship less that $5,000,000 worth of potatoes and 17 percent ship more than $5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Oregon-California potato producers, average annual producer receipts are approximately $285,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of

Oregon-California potatoes may be classified as small entities.

This rule suspends the handling regulations and establishes reporting requirements from July 1, 1999, through June 30, 2000. This rule will allow the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements. The handling regulations currently specified in § 947.340 will resume July 1, 2000, for the 2000–2001 season and future seasons. Reporting requirements will allow the Committee to obtain information from handlers necessary to collect assessments.

At its February 23, 1999, meeting, the Committee unanimously recommended suspending the handling regulations and establishing reporting requirements for the 1999–2000 season. The Committee met again on May 14, 1999, to review the recommendation made at the earlier meeting. After extensive discussion, the Committee decided not to rescind or modify their earlier recommendation to suspend handling regulations. The Committee requested that this rule be effective for the fiscal period beginning July 1, 1999, which is also the date shipments of the 1999 Oregon-California potato crop began.

The objective of the handling requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee has been discussing the possibility of reducing costs through the elimination of mandatory inspection. The Committee is concerned, however, that the elimination of current handling and inspection requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there is some concern that the Oregon-California potato industry could lose sales to other potato producing areas that are covered by quality and inspection requirements. For these reasons, the Committee recommended that the suspension of handling requirements be effective for the 1999–2000 season only. This will enable the Committee to study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements for the 1999–2000 season only. This rule will allow handlers to decrease costs by eliminating the costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will evaluate the effects of removing the minimum requirements on marketing and on producer returns at its meeting next spring.

The suspension of the handling regulations will result in the elimination of the monthly inspection report from the Federal-State Inspection Service which the Committee used for billing purposes. This inspection report was compiled by the Federal-State Inspection Service from inspection certificates. During this suspension of the handling regulations, reports from handlers will be necessary for the Committee to obtain information on which to collect assessments. This rule establishes a new § 947.180 *Reports* which requires each handler to submit a monthly assessment report to the Committee containing the following information: (a) The date and quantity of fresh potatoes sold including identification numbers; (b) the name and address of the producers; (c) the assessment payment due; and (d) the name and address of the handler. Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. Although adding reporting requirements, this rule through the elimination of inspection and certification requirements is expected to reduce industry expenses.

Contained within § 947.340(i) of the current handling regulations is a minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the inspection and assessment requirements issued under the order. The suspension of the handling regulations removes all inspection requirements. To continue the current minimum quantity exemption for assessments, a new 947.125 *Minimum quantity exemption* is established. This section simply continues the current minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the assessment requirements issued under the order.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will suspend minimum grade, size, quality, maturity, pack, and inspection requirements. Further, this rule will allow handlers and producers the choice to obtain inspection for potatoes, as needed, thereby reducing cost to producers and handlers. The total cost of inspection and certification for fresh shipments of Oregon-California potatoes during the 1998–99 marketing season is estimated at $600,000. This is approximately $20,000 per handler. The Committee expects, however, that most handlers will continue to have some of their potatoes inspected and certified by the Federal-State Inspection Service.

The Committee investigated the use of other types of inspection programs as another option to reduce the cost of inspection, but believed they were not viable at this time. With the suspension of handling regulations, there are no alternatives to reporting requirements to ensure the collection of assessments needed to administer the order.

This rule will require monthly reports from handlers to obtain information necessary to collect assessments. Although this rule establishes new reporting requirements, the suspension of the handling regulations eliminates the more frequent reporting requirements that were included under the safeguard provisions of the order.

Therefore, any additional reporting or recordkeeping requirements on either small or large potato handlers are expected to be offset by the elimination of reporting requirements currently in effect. In addition, the elimination of inspection and certification requirements is expected to further reduce industry expenses. Finally, as with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178. It is estimated that it will take a handler 20 minutes to complete a monthly assessment report, and that each handler will fill out 12 monthly assessment reports each year. This creates an estimated total industry burden of approximately 120 hours. It is estimated that it currently takes a handler 5 minutes to complete a safeguard reporting form. With an estimated 2,000 safeguard reports completed each year, the estimated

decrease in burden because of the elimination of safeguard reporting requirements is estimated to be 167 hours.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. Further, the Committee's meetings were widely publicized throughout the Oregon-California potato industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the February 23, 1999, and May 14, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 14 members, of which 5 are handlers and 9 are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on June 25, 1999. A copy of the rule was mailed to the Committee's administrative office for distribution to producers and handlers. In addition, the rule was made available through the Internet by the Office of the **Federal Register**. That rule provided for a 60-day comment period which ended August 24, 1999. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 34113, June 25, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 64 FR 34113 on June 25, 1999, is adopted as a final rule without change.

Dated: September 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–23792 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR PARTS 9003, 9004, 9008, 9032, 9033, 9034, 9035, and 9036

[Notice 1999–17]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final Rule and Transmittal of Regulations to Congress.

SUMMARY: The Commission is revising its regulations governing publicly financed Presidential primary and general election candidates. These regulations implement the provisions of the Presidential Election Campaign Fund Act (''Fund Act'') and the Presidential Primary Matching Payment Account Act (''Matching Payment Act''), which establish eligibility requirements for Presidential candidates seeking public financing, and indicate how funds received under the public financing system may be spent. They also require the Commission to audit publicly financed campaigns and seek repayment where appropriate. The revised rules reflect the Commission's experience in administering this program during several previous Presidential election cycles and also seek to resolve some questions that may arise during the 2000 Presidential election cycle. Further information is provided in the supplementary information that follows.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c) and 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Assistant General Counsel, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations governing the public financing of Presidential campaigns, 11 CFR Parts 9001 through 9039, to more effectively administer the public financing program during the year 2000 election cycle. These rules implement 26 U.S.C. 9001 *et. seq.* and 26 U.S.C. 9031 *et. seq.* On December 16, 1998, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 63 FR 69524 (Dec. 16, 1998).

In response to the NPRM, written comments were received from Aristotle Publishing, Inc.; America Online, Inc.; Philadelphia 2000; Perot for President '96; James Madison Center for Free Speech; Common Cause and Democracy 21 (joint comment); Brennan Center for Justice; Lyn Utrecht, Eric Kleinfeld, and Patricia Fiori (joint comment); Democratic National Committee; Hervey W. Herron (two comments); Republican National Committee; the Internal Revenue Service, and Carl P. Leubsdorf and twenty nine executives of news organizations (joint comment). The Internal Revenue Service stated that it has reviewed the NPRM and finds no conflict with the Internal Revenue Code or regulations thereunder. Subsequently, the Commission reopened the comment period and held a public hearing on March 24, 1999, at which the following eight witnesses presented testimony on the issues raised in the NPRM: Kim Hume (Fox News), George Condon (Copley News Service), Lyn Utrecht (Ryan, Phillips, Utrecht & MacKinnon), Joseph E. Sandler (Democratic National Committee), Thomas J. Josefiak (Republican National Committee), David Eisner and Trevor Potter (America Online, Inc.), and James Bopp, Jr. (James Madison Center for Free Speech).

Please note that the Commission has already published separately final rules modifying the candidate agreement provisions so that federally-financed Presidential committees must electronically file their reports. *See* Explanation and Justification of 11 CFR 9003.1 and 9033.1, 63 FR 45679 (August 27, 1998). Those regulations took effect on November 13, 1998. *See* Announcement of Effective Date, 63 FR 63388 (November 13, 1998). In addition, the Commission has issued final rules governing the matchability of contributions made by credit and debit cards, including those transmitted over the Internet. *See* Explanation and Justification of 11 CFR 9034.2 and 9034.3, 64 FR 32394 (June 17, 1999). An effective date for the matching fund rules will be announced once those regulations have been before Congress for thirty legislative days. Final rules concerning coordinated party committee

expenditures in the pre-nomination period and reimbursement by the news media for travel expenses are also pending before Congress. *See* Explanation and Justification of 11 CFR 110.7, 9004.6 and 9034.6, 64 FR 42579 (Aug. 5, 1999).

The NPRM discussed several other topics that are not included in the attached final rules. The Commission expects to address the following areas at a later date: (1) Coordination between candidates and party committees on political ads, polling, media production, consulting services and sharing of employees; (2) Modifications to the audit process; (3) Bases for primary repayment determinations; 4) The ''bright line'' between primary expenses and general election expenses; and (5) Pre-nomination formation of Vice Presidential committees.

Sections 9009(c) and 9039(c) of Title 26, United States Code, require that any rules or regulations prescribed by the Commission to carry out the provisions of Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on September 7, 1999.

Explanation and Justification

Part 9003—Eligibility for Payments

Section 9003.3 Allowable Contributions; General Election Legal and Accounting Compliance Fund

1. Pre-nomination Formation of a GELAC

Section 9003.3 contemplates that a nominee of a major political party who accepts public financing for the general election may establish a privately funded General Election Legal and Accounting Compliance Fund (''GELAC'') for certain limited purposes. A GELAC may be set up before the candidate is actually nominated for the office of President or Vice President. The Commission sought comments on several changes to this section to address problems that have arisen when primary candidates established GELACs relatively early in the primary campaign but subsequently failed to win their party's nomination. One difficulty is that candidates who do not receive their party's nomination must return all private contributions received by the GELAC. However, if some of those funds have been used to defray overhead expenses or to solicit additional contributions for the GELAC, a total refund has presented difficulties. Another problem has been ensuring that the GELAC is not improperly used to make primary election expenditures. In particular, this may become an issue when a candidate secures the nomination well in advance of the convention and has almost completely exhausted the spending limits for the primary. To avoid a recurrence of these situations, the NPRM sought comments on the following five alternative amendments to paragraph (a)(1)(i) of section 9003.3:

(1) Bar GELAC fundraising prior to the candidate's nomination at the party's national nominating convention. Under this approach, a candidate may establish a GELAC before the date of nomination, but only for the limited purpose of receiving correctly redesignated contributions that would otherwise have to be refunded as excessive primary contributions.

(2) Bar GELAC fundraising before a specified date, such as April 15 of the Presidential election year. Under this alternative, starting on April 15 of the Presidential election year, candidates may begin soliciting contributions for the GELAC. However, if the candidate does not become the nominee, all contributions accepted for the GELAC, including redesignated contributions, must be refunded within sixty (60) days of the candidate's date of ineligibility.

(3) Allow GELAC fundraising beginning 90 days before each candidate's date of nomination. This approach means that the nominees of the two major parties will begin GELAC fundraising on different dates.

(4) Bar Presidential candidates from establishing a GELAC until the date of the last Presidential primary before the national nominating convention. A variation on this approach is to allow the eventual nominee to form a GELAC at an earlier point, but to prohibit GELAC fundraising before the last Presidential primary.

(5) Allow any Presidential primary candidate to establish and to raise funds for a GELAC at any time. Under this approach, those who do not win their party's nomination do not have to return all the funds they raise. Instead, they could offset their fundraising and administrative expenses, and would only need to refund the amount remaining in their account as of the date their party selects a nominee. The NPRM asked whether all contributors should receive a proportional refund or whether a first-in-first-out method should be used to determine which contributions have been spent, with refunds going to the most recent contributors. The NPRM noted that this alternative is significant departure from the treatment of general election contributions received by losing primary candidates in Congressional races.

The two witnesses who addressed this topic stressed the importance of implementing policies that encourage candidates to spend money to achieve voluntary compliance with the campaign financing laws. Hence, they both urged the Commission to make no changes that would create a disincentive to spend money on compliance. They urged the Commission to continue to allow candidates to have the discretion to determine when to form a GELAC and begin GELAC solicitations. Thus, they both supported alternative 5, under which losing primary candidates only be required to refund or obtain donor redesignation for funds remaining in the account.

The Commission has decided to adopt a modified version of alternative 2. Under this approach, paragraph (a)(1)(i) continues to permit GELACs to be established at any time. However, new language indicates that before June 1 of the Presidential election year, the GELAC may only be used for the deposit of primary election contributions that exceed the contributors' contribution limits and are properly redesignated under 11 CFR 110.1. Please note that overhead and reporting expenses incurred by the GELAC may be defrayed from interest received on the account. The modifications to these regulations also specify that the GELAC may not solicit contributions before June 1 of the Presidential election year. This date has been selected because, barring unforeseen circumstances, this is the point when a party's prospective nominee can be reasonably assured that he or she will need to raise funds for a GELAC. This time frame also gives the prospective nominee sufficient time to raise the funds that will be needed. Please note that revisions to the rules governing joint fundraising between the primary campaign and the GELAC are discussed below in section 9034.4.

Paragraph (a)(1)(i) of this section is also being revised to state more clearly that a GELAC may be established by an individual who is seeking his or her party's nomination, but who is not yet a general-election candidate as defined in section 9002.2.

The Commission is also amending paragraph (a)(1)(i) of section 9003.3 to indicate that if the candidate does not become the nominee, all contributions accepted for the GELAC, including redesignated contributions, must be refunded within sixty (60) days of the candidate's date of ineligibility. Such refunds are consistent with the Commission's decision in the last

Presidential election cycle to require refunds within 60 days of the date on which the political party of the unsuccessful primary candidate selects its nominee. These refunds are also consistent with the policies applicable to non-publicly funded Congressional candidates who accept designated general election contributions, but who thereafter lose their parties' primaries. *See* 11 CFR 102.9(e)(2), and Advisory Opinions 1992–15 and 1986–17. Please note that if contributors do not cash the refund checks, the provisions of section 9007.6 governing stale dated checks will apply.

2. Transfers from the Primary Campaign Committee to the GELAC

The regulations at 11 CFR 9003.3(a)(1)(i) through (v) place certain restrictions on transferring funds from a Presidential candidate's primary committee to a GELAC. The purpose of these limitations is to ensure that the GELAC is not used as a way to increase a candidate's entitlement to matching funds or to decrease a candidate's repayment obligations. The NPRM sought suggestions as to how these provisions could be strengthened, and whether it is advisable to do so. The sole comment that addressed this issue stated that the current regulations at 11 CFR 9003.3(a)(1) are more than adequate to ensure that the GELAC is not used to increase candidate entitlement or decrease repayments. The Commission has decided not to amend these transfer regulations because it agrees that the current rules adequately fulfill these objectives.

Section 9003.5 Documentation of Disbursements

Section 9003.5(b)(1) sets forth the documentation publicly financed general election committees must provide for disbursements in excess of $200. The documentation includes a canceled check that has been negotiated by the payee. However, paragraph (b)(1)(iv) of this section refers back to this canceled check without specifically restating that it must be negotiated by the payee. To avoid possible confusion, the Commission is amending section 9003.5(b)(1)(iv) by adding the words ''negotiated by the payee.'' This change is consistent with the recent judicial decision in *Fulani* v. *Federal Election Commission,* 147 F.3d 924 (D.C. Cir. 1998). A cross reference is also being added to assist the reader in locating the reporting regulations that list examples of acceptable and unacceptable descriptions of ''purpose.'' *See* 11 CFR 104.3(b)(3)(i)(B). None of the public comments or testimony addressed these changes.

Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

Section 9004.4

1. Winding Down Costs

Two technical changes are being made to the winding down provisions found in paragraph (a)(4) of section 9004.4. First, the ''or'' at the end of paragraph (a)(4)(i) is being changed to ''and,'' to clarify that the expenses listed in both paragraphs (a)(4)(i) and (a)(4)(ii) are considered winding down costs. Second, paragraph (a)(4)(ii) is being amended to more clearly indicate that the winding down costs described in this paragraph are costs associated with the general election campaign.

2. Lost, Misplaced, or Stolen Items

Paragraph (b)(8) of this section addresses situations where equipment in the possession of general election committees is lost or damaged. As a general matter, the cost of lost or misplaced items may not be defrayed with public funds. However, given that there are varying degrees of responsibility in this area, the rules provide that certain factors should be considered, such as whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; the type of equipment involved; and the number and value of items that were lost.

The Commission has decided to modify this paragraph to include stolen items and to add as another factor whether a police report was filed. There were no public comments on this portion of the regulations.

Section 9004.9 Net Outstanding Qualified Campaign Expenses

The amendments to the provisions governing the disposition of capital assets in section 9004.9(d)(1) are discussed below. *See* the Explanation and Justification for 11 CFR 9034.5(c)(1).

Part 9008—Federal Financing of Presidential Nominating Conventions and Host Committees

Section 9008.7 Use of Funds

New paragraph (c) is being added to section 9008.7 to address situations where equipment in the possession of convention committees is lost, misplaced, or stolen. The rule indicates that as a general matter, the cost of lost, misplaced, or stolen items may not be defrayed with public funds. However, the Commission recognizes that there are varying degrees of responsibility in this area. Accordingly, the regulation also provides that certain factors should be considered, such as whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost. This approach is consistent with the Commission's treatment of items lost or misplaced by, or stolen from, publicly funded candidates. *See* 11 CFR 9004.4(b)(8) and 9034.4(b)(8). None of the public comments or testimony specifically addressed this aspect of the convention regulations.

Section 9008.14 Petitions for Rehearings; Stays of Repayment Determinations

In section 9008.14, the term ''final repayment determinations'' is being replaced by ''repayment determinations.'' This amendment conforms with the changes in terminology made when the rules setting out audit and repayment procedures were last revised in 1995.

Section 9008.52 Receipts and Disbursements of Host Committees

1. Local Banks and Local Individuals

The NPRM sought comments on amending section 9008.52(c)(1), which addresses the receipt of donations by host committees. Specifically, the NPRM sought to allow local banks to donate funds and make in-kind donations for the limited purposes described in these rules. The two commenters who addressed this topic supported the proposed amendment. They found no rationale for the long standing distinction in the rules between donations from local corporations and donations from local branches of national banks. One of the commenters argued that local branches of national banks have the same interest as other local businesses in promoting the city and supporting commerce.

The Commission agrees with these comments. Consequently this amendment is being included in the attached final rules that follow. Please note that the revised rules supersede, in part, Advisory Opinion 1995–31 regarding local branches of national banks.

The second changes to section 9008.52(c)(1) concerns the categories of individuals who may donate funds or

make in-kind donations to host committees, government agencies and municipal corporations. The revisions restrict these donations to individuals who either maintain a local residence or who work for a business's local office, or a labor organization's local office, or another organization's local office. This new language is consistent with AO 1995–32 with respect to donations by individuals.

Two commenters opposed restricting donations to ''local'' individuals on several grounds. They argued that the Commission misinterpreted its own regulation in AO 1995–32. In addition, one commenter stated that the policy concerns regarding corporate aggregation of wealth are not applicable to individuals. This comment appears to overlook the compelling governmental purposes—preventing corruption and the appearance of corruption—that underlie the statutory restrictions on individual contributions. One of the commenters also asserted that this change to the regulation impermissibly infringes upon the First Amendment's guarantee of freedom of speech. Given that the FECA's contribution limitations were upheld in *Buckley* v. *Valeo,* 424 U.S. 1 (1976), in the face of a First Amendment challenge, this argument is not persuasive. In addition, one commenter also argued that there are compelling reasons why individuals residing outside the metropolitan area of the convention city would want to support the host committee. However, the comment failed to indicate what such reasons might be.

Consequently, the Commission does not find the commenters' arguments persuasive. Therefore, this change is being included in the final rules.

2. Permissible Host Committee Expenses

During the audits of the 1996 convention and host committees, a number of questions were raised as to the scope of expenses that may be paid by a host committee instead of a convention committee. Section 9008.52(c)(1) enumerates the types of expenses that host committees may defray with donated funds. Section 9008.7(a) lists the types of convention expenses that may be paid for using public funds. These two sections of the regulations are not mutually exclusive. Nor do they cover every conceivable type of expense that may arise. Consequently, the NPRM sought comments on amending one or both of these provisions to provide greater specificity regarding allowable or nonallowable expenses for convention or host committees. Disputed items have included: (1) Badges, passes or other types of credentials used to gain entry to the convention hall or specific locations within the hall; (2) electronic vote tabulation systems; and (3) lighting and rigging costs, including paying stagehands, riggers, projectionists, electricians, and producers. The NPRM noted that with respect to lighting and rigging expenses, in particular, it can be difficult to distinguish between the costs associated with improving the infrastructure of the convention hall and the costs of producing and broadcasting the convention proceedings to the general public or to those within the convention hall. Specific changes to these regulations were not included in the NPRM.

One host committee and two national party committees urged the Commission to defer consideration and implementation of any significant changes regarding permissible host committee expenditures until after the year 2000 Presidential elections because the host committees and national party committees have already finalized their contractual arrangements for the year 2000 Presidential nominating conventions. One of these witnesses observed that the purpose and functions of host committees are nonpartisan, namely to maximize the economic benefit to the city. This party committee witness argued that the current rules are adequate and provide the flexibility necessary to accommodate the unique circumstances found in different host cities and in light of swiftly changing technology. Consequently, this witness opposed new restrictions on the goods and services that a host committee may provide. The other party committee witness indicated that it is contemplating selective use of the advisory opinion process to obtain clarification, as needed, of the existing regulations.

Given that the party committees have already entered into contractual agreements with the sites selected, the Commission has decided not to modify the existing regulations at this time with regard to the division of expenses between convention committees and host committees. Please note also that the Commission's decisions regarding the audits of the 1996 convention and host committees serve to provide additional guidance for the 2000 election cycle.

Section 9008.53 Receipts and Disbursements of Government Agencies and Municipal Corporations

The changes being made to 11 CFR 9008.53(b)(1), which governs the receipt of donations by government agencies and municipal corporations, generally follow the revisions to section 9008.52(c)(1). Consequently, a separate fund or account of a government agency or municipality may accept donations from local banks and individuals who either maintain a local residence or who work for a business's local office, or a labor organization's local office, or another organization's local office.

Part 9032—Definitions

Section 9032.11 State

The definition of ''State'' in section 9032.11 is being updated by deleting the Canal Zone and by adding American Samoa, which holds Presidential primaries consisting of caucuses. There is no corresponding provision in the general election rules.

Part 9033—Eligibility for Payments

Section 9033.11 Documentation of Disbursements

The revisions to section 9033.11 follow the amendments to section 9003.5 discussed above. No public comments were received regarding these changes.

Part 9034—Entitlements

Section 9034.4 Use of Contributions and Matching Payments

1. Winding Down Costs

The regulations at 11 CFR 9034.4(a)(3) permit candidates to receive contributions and matching funds, and to make disbursements, for the purpose of defraying winding down costs over an extended period after the candidate's date of ineligibility (''DOI''). However, after the implementation of the ''bright line'' rules in 1995, questions arose as to whether all salary and overhead incurred after the date of the candidate's nomination must be attributed to the general election, including those associated with winding down the primary campaign. *See* 11 CFR 9034.4(d)(3). Accordingly, the NPRM sought comments on revising section 9034.4(a)(3)(i) and (iii) to indicate that for candidates who win their parties' nominations, no salary and overhead expenses may be treated as winding down costs until after the end of the expenditure report period, which is thirty days after the general election takes place.

The written comments of two witnesses opposed this change. One witness viewed the proposal as a ''success penalty'' for winning primary candidates. This witness noted that all primary candidates, whether they win or lose the nomination, must incur wind down costs. Similarly, the other witness stated that general election candidates

must incur primary campaign wind down costs during the general election period for such activities as paying debts, filing FEC reports, making matching fund submissions, and responding to FEC auditor requests in preparation for the audit. Consequently, this witness argued that the primary committees of the candidates who win the nomination should be able to pay these expenses. This comment also noted that the proposed rule would lower the amount of matching funds that could be received for these legitimate primary expenses, thereby treating winning primary candidates differently from those who lose their party's nomination.

The Commission has concluded that this area needs to be clarified. During the general election campaign, there are significant distinctions between the winding down activities of candidates who win their parties' nominations and those who do not, particularly with regard to legal and accounting compliance expenses. Accordingly, the revised rules indicate that a publicly funded primary candidate who does not run in the general election may begin to treat 100% of salary and overhead expenses as compliance after the candidate's date of ineligibility. However, federally financed primary candidates who continue on to the general election, as well as non-federally financed primary candidates who accept general election funding, must wait until after the end of the expenditure report period for the general election before they may begin treating all salary and overhead expenses as compliance expenses. Please note that the 100% figure applies to the salaries of those who continue to provide substantial services to the committee after the end of the expenditure report period. Compliance expenses between the date of nomination and the end of the expenditure report period are covered by the revisions to section 9035.1(c)(1), discussed below.

2. Lost, Misplaced, or Stolen Items

The revisions to paragraph (b)(8) of section 9034.4 follow the changes made to section 9004.4(b)(8). None of the public comments or testimony addressed this provision.

3. ''Bright Line'' Distinction Between Primary and General Election Expenses

Paragraph (e) of section 9034.4 sets forth certain ''bright line'' distinctions as to which expenses should be attributed to a candidate's primary campaign and which ones should be considered general election expenses. Revisions are being made to this paragraph to reflect that not all candidates may accept public funding in both the primary and the general election. Nevertheless, candidates accepting federal financing for only the general election will also need guidance in attributing their expenditures between their primary election committees and their general election committees. Accordingly, paragraph (e) is being amended to indicate that it applies to Presidential campaign committees that accept federal funds for either election.

As noted above, the Commission expects to address a variety of other issues involving the bright line in a separate set of final rules to be issued at a later date.

4. Joint Primary/GELAC Solicitations

Paragraph (e)(6)(i) of section 9034.4 addresses situations where a candidate's GELAC and his or her primary committee issue joint solicitations for contributions. Under the revised rules that took effect for the 1996 elections, the costs of such solicitations were divided equally between the two committees, regardless of how much money is actually raised for each. One difficulty with this, however, was that in some situations it enabled the GELAC to absorb a relatively high portion of fundraising costs while receiving a relatively low proportion of the funds raised. Thus, this provision was at odds with the joint fundraising rules applicable to other types of joint fundraising conducted by publicly funded Presidential primary committees under 11 CFR 9034.8. In effect, section 9034.4(e)(6)(i) could permit the GELAC to subsidize fundraising expenses that would otherwise be paid by the primary committee and subject to spending limits. Questions were also raised as to whether the rule should cover only the cost of a solicitation, or whether it would be more appropriate to include other fundraising costs, such as staff salaries, consulting fees, catering, facilities rental, and the candidate's travel to the event site. Consequently, the NPRM suggested the following four alternatives to paragraph (e)(6)(i):

(1) Allocate solicitation expenses and the distribution of net proceeds from a fundraiser in the same manner as described in 11 CFR 9034.8(c)(8) (i) and (iii), which are the provisions that apply to unaffiliated committees.

(2) Prohibit joint fundraising between the primary and the GELAC. If each committee performs its own fundraising, the difficulties inherent in apportioning expenses do not arise. This approach eliminates the problem that the recipient committees may not know which of several solicitation letters or fundraising events generated a given contribution.

(3) Treat all expenses incurred by the GELAC prior to the candidate's date of ineligibility or date of nomination as qualified campaign expenses for the primary election. This approach avoids GELAC subsidization of the primary campaign, and is easy to work with.

(4) Specify in § 9003.3(a)(2)(i)(E) that the GELAC may only pay for the following solicitation costs: printing invitations and solicitations, mailing, postage and telemarketing expenses. This approach excludes GELAC payment for catering, facilities rental, fundraising consultants, employee salaries, and travel to the event site.

Two witnesses addressed this topic in their written comments. They both supported the current 50/50 rule for its simplicity. One commenter specifically urged that this rule be expanded to cover all types of fundraising costs, including event and travel costs. The other witness indicated that it would also make sense to follow the already-established joint fundraising rules.

The Commission has decided to implement the first alternative, which treats joint primary/GELAC fundraising the same as joint fundraising by unaffiliated committees. The joint fundraising rules in § 9034.8 are well-established and have proved to work well in other contexts. Under the revisions to 9034.4(e)(6)(i), the GELAC and the primary committee must apportion their fundraising costs, including printing invitations and solicitations, mailing, postage, telemarketing expenses, catering, facilities rental, fundraising consultants, and employee salaries, using the percentage of contributions each committee receives from the joint fundraising effort. Given the unique relationship between the primary campaign and the GELAC, and the fact that the candidate's primary committee receives public financing in exchange for voluntary compliance with spending limits, it is important to ensure that costs are correctly apportioned and net proceeds are properly distributed. Under this new provision, for example, if the GELAC receives 25% of the net proceeds, it may only pay 25% of the fundraising expenses, and no more than that amount.

Section 9034.5 Net Outstanding Campaign Obligations

In determining a Presidential primary committee's net outstanding campaign obligations (''NOCO''), § 9034.5(c)(1) permits candidates to deduct 40% of the

original cost of capital assets for depreciation. Similarly, § 9004.9(d)(1) provides for a straight 40% depreciation figure for capital assets purchased by general election campaign committees for purposes of the general election committee's statement of net outstanding qualified campaign expenses (''NOQCE''). At one time, the Commission had permitted federally financed Presidential campaign committees to demonstrate that a higher depreciation was appropriate for capital assets. In 1995, as part of an effort to streamline the audit process and to establish ''bright lines'' between primary expenses and general election expenses, the Commission adopted the straight 40% depreciation figure for all assets purchased after the change in the regulations took effect. It was believed that situations where the 40% figure was too low would be counterbalanced by situations where the figure was too high. Experience during the 1996 Presidential audits has shown that the 40% depreciation figure is unrealistically low for capital assets such as vehicles, computer systems, telephone systems, and other equipment that is heavily used during a Presidential primary campaign.

For this reason, the NPRM sought comments on the amending § 9034.5(c)(1) to allow primary candidates to demonstrate a higher depreciation figure through documentation of the fair market value. A similar amendment was proposed for the corresponding general election provision in 11 CFR 9004.9(d). Two comments addressed this proposed change. Both of them agreed that candidates should be allowed to demonstrate a higher depreciation. As the Commission concurs, this amendment is being included in both sections of the final rules.

The NPRM also contemplated the establishment of a minimum fair market value of 60% of the purchase price in situations where a candidate's primary committee transfers or sells capital assets to his or her publicly financed general-election committee. Both comments argued that the price for assets transferred from primary to general election committee should be based on actual fair market value, which may be less, rather than an artificial percentage applicable to all types of capital assets.

The final rules include the ''bright line'' approach, whereby the value of transferred assets is 60% of original purchase price. The Commission has concluded that it would be too complex to determine the fair market values of every capital asset actually transferred. The 60% figure is intended to reflect that while some capital assets are worth less, others are worth more. Sixty percent is reasonable in light of the fact that capital assets such as computer systems or telecommunications systems are customized and configured specifically to meet the needs of that particular campaign organization. It may also be of added value to the campaign staff to continue to work with familiar equipment, and to avoid the disruption that would occur if new equipment were obtained, instead. With respect to the sale of non-capital assets from the primary to the general election committee, new language in paragraph (d)((1)(iii) indicates that an inventory must be prepared. This is needed to verify the valuation included on the primary committee's NOCO statement as well as the amount listed on the general election committee's NOQCE statement.

The revised regulations in 11 CFR 9004.9(d) indicate that once the general election campaign is over, the value of assets obtained from the primary campaign committee shall be listed on the NOQCE statement as 20% of the original cost to the primary committee. Please note that campaigns do not have the option of demonstrating that an amount less than 20% is appropriate. Based on past experience, the Commission has concluded that a 20% residual value is a realistic figure for equipment that has been used throughout both the primary and general election campaigns.

The commenters argued that this figure should also be based on actual fair market value, which may be less, rather than an artificial percentage applicable to all types of capital assets. Nevertheless, the Commission has concluded that this is another area where it would be too complex to determine the fair market values of every capital asset on hand. Some capital assets may be worth less, while others may be worth more. Accordingly, the revisions to 11 CFR 9004.9(d) incorporate the 20% residual value figure. Please note that the general election committee may, if it wishes, sell these capital assets to the GELAC for the 20% residual value.

Another revision included in 11 CFR 9004.9 and 9034.5 is a clarification of the term ''capital asset.'' A new sentence is being added to sections 9004.9(d) and 9034.5(c)(1) to indicate that when the components of a system, such as a computer system or a telecommunications system, are used together and the total cost of the components exceeds $2000, the entire system is considered a capital asset. This new language conforms to the Commission's previous interpretation of its rules. *See* Explanation and Justification for 11 CFR 9034.5, 60 FR 31868 (June 16, 1995). The NPRM sought comments on whether computer software should be treated as a capital asset. One commenter argued that software should not be considered to be a capital asset because the vendors' licensing agreements may bar transfer of the software. The Commission notes that some software programs may be sold as a package together with a computer system, thus making it impracticable to list them as separate capital assets on a NOCO statement.

Lastly, please note that an incorrect reference to the date of ineligibility in paragraph (d)(1)(i) of section 9004.9 has been changed to refer to the end of the expenditure report period.

Part 9035—Expenditure Limitations

Section 9035.1 Campaign Expenditure Limitation; Compliance and Fundraising Exemptions

The rules at 11 CFR 9035.1(c)(1) set forth an exemption from the overall spending limit for legal and accounting compliance costs incurred by federally financed Presidential primary committees. In the past, to claim this exemption, campaign committees have had to keep detailed records of salary and overhead expenses, including records indicating which duties are considered compliance and the percentage of time each person spends on such activities. The NPRM sought to amend this regulation to provide a simpler and easier method of calculating the compliance exemption. Accordingly, comments were sought on revising this paragraph to state that an amount equal to 10% of all operating expenditures for each reporting period may be treated as compliance expenses not subject to the candidate's spending limit. The NPRM noted that this amount could be readily derived from line 23, Operating Expenses, on the committee's reports.

Several commenters and witnesses stressed the importance of implementing policies that encourage candidates to spend money to achieve voluntary compliance with the campaign financing laws. Consequently, some of these opposed establishing an upper limit of 10% of operating costs that could be spent for compliance costs, arguing that the Commission should not discourage spending more money on compliance. They also pointed out that compliance costs may be unrelated to the overall amount of operating costs, and that committees

having low operating costs could be disadvantaged. One witness urged the Commission to let committees demonstrate that their actual legal and accounting costs are higher than the standard percentage.

The Commission agrees that it is not sound policy to artificially limit or discourage compliance spending. Nevertheless, establishing a ''standard deduction'' for compliance has the advantage of simplicity and ease of application. Consequently, the Commission has decided to modify the initial proposal so that an amount equal to 15% of the candidate's overall expenditure limit may be excluded as exempt legal and accounting compliance costs under 11 CFR 100.8(b)(15). A review of previous Presidential campaigns indicates that this figure approximates the upper amount publicly funded primary committees have spent in previous election cycles. Unlike the initial proposal, this approach is not tied to monthly operating expenditures. Thus, it allows for greater flexibility in earlier reporting periods when committees may be setting up their legal and accounting systems. A similar approach has worked well with respect to fundraising expenses. *See* 11 CFR 100.8(b)(21) and 9035.1(c)(2). Note that the final rule does not permit committees to demonstrate that they have actually incurred a higher amount because the Commission is seeking to move away from its previous resource-intensive system that required the creation, maintenance, and review of considerable paperwork to document compliance costs. However, as explained above, in addition to the 15% of the overall spending limits, publicly funded primary candidates may also treat 100% of their overhead and salary expenses as exempt compliance costs after their date of ineligibility or after the end of the expenditure report period. These changes to the regulations are intended to decrease the time it takes for the Commission to verify compliance costs during the audit process. They should also reduce the resources campaign committees must devote to tracking compliance costs.

Please note that the title of section 9035.1 is also being revised and subheadings for each paragraph are being added to assist readers in locating the material in this section more easily.

Part 9036—Review of Matching Fund Submissions and Certification of Payments by Commission

Section 9036.1 Threshold Submission

During the 1996 Presidential election cycle, the Commission instituted a new program whereby primary campaign committees may submit contributions for matching fund payments through the use of digital imaging technology such as computer CD ROMs, instead of submitting paper photocopies of checks and deposit slips. For the 2000 election cycle, the Commission is expanding this program to permit the use of digital imaging for primary committees' threshold submissions. *See* new language in paragraph (b)(3) of section 9036.1. Please note that committees wishing to submit paper records and documentation, instead of digital images, may do so. The only written set of comments to address this topic supported the submission of this documentation via CD ROM.

Section 9036.2 Additional Submissions for Matching Fund Payments

Paragraph (b)(1)(vi) of this section is being revised to enable primary committees to submit digital images of contributor redesignations, reattributions and supporting statements and materials needed to establish the matchability of contributions. The single set of written comments to address this topic indicated that it would be burdensome for committees to maintain paper copies of original documentation other than contributor cards and affidavits. The Commission notes that the amendment to the regulations is only intended to give Presidential primary committees the option, in lieu of paper submissions, of electronically submitting digital images of contributor redesignations, contributor reattributions and the types of supporting statements commonly found on contributor cards. The requirements of 11 CFR 110.1(l) for maintaining the original documents are not being changed. Hence, revised section 9036.2 does not impose additional recordkeeping burdens on Presidential committees.

Additional Issues

During the course of this rulemaking, the Commission considered other possible changes to the regulations that it did not ultimately incorporate into the final rules. A summary of these proposals follows.

1. Allocation of Presidential Travel Costs

The Commission's regulations at 11 CFR 9004.7 and 9034.7 govern the allocation of travel expenses when other candidates or elected officials accompany a publicly funded Presidential candidate, or such candidate's staff, on campaign-related trips. One commenter addressed several differences between these rules and the provisions of 11 CFR 106.3 governing travel expenses for Congressional candidates and for Presidential candidates who don't accept federal funds for their campaigns.

The Commission has concluded that these proposals are beyond the scope of this rulemaking. At a later date, however, they may be included in a new rulemaking addressing possible revisions to 11 CFR 106.3. Changes in this area would impact all federal candidates, not just those who have or are running for President and have accepted federal funding for their campaigns. Thus, the Commission would want to have the benefit of obtaining comments from non-Presidential candidates before promulgating new rules that would affect them. In addition, to the extent possible, the Commission would need to closely consider consistency with Congressional guidelines regarding travel.

2. Aircraft Owned by Individuals and Charter Rates

The Commission's regulations at 11 CFR 114.9(e) create exceptions to the definitions of contribution and expenditure to allow candidates and their campaign staff to travel on aircraft owned by corporations or labor organizations if they provide reimbursement within specified time periods. Similarly, 11 CFR 9004.7 and 9034.7 provide for reimbursement for campaign-related travel on government aircraft such as Air Force One or Air Force Two. However, no comparable provisions cover travel on aircraft owned by individuals, partnerships or other unincorporated entities. One commenter urged the Commission to amend its regulations to apply the same first-class reimbursement requirement to travel on private aircraft regardless of the nature of the owner of the aircraft. With regard to travel between cities not having first class service, the comment urged the Commission to let authorized committees use the ''lowest available'' charter rate instead of the ''usual'' charter rate.

For some of the reasons mentioned above, the Commission has concluded

that these proposals are beyond the scope of this rulemaking. They could, however, be included in a new Notice of Proposed Rulemaking at a later date. Changes of this nature would impact all federal candidates, not just those who have are running for President and have accepted federal funding for their campaigns. Thus, the Commission would want to have the benefit of obtaining comments from non-Presidential candidates before promulgating new rules that would affect them. In addition, this complex area is also subject to regulation by the Federal Aviation Administration, and consultation with that agency would be advisable before issuing final rules. Similarly, the Commission would need to carefully consider the consistency of its rules with Congressional guidelines regarding travel.

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

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that very few small entities will be affected by these proposed rules, and the cost is not expected to be significant. Further, any small entities affected have voluntarily chosen to receive public funding and to comply with the requirements of the Presidential Election Campaign Fund Act or the Presidential Primary Matching Payment Account Act in these areas.

List of Subjects

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements

11 CFR Part 9004

Campaign funds

11 CFR Part 9008

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

11 CFR Part 9032.

Campaign funds.

11 CFR Parts 9033—9035

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Subchapters E and F of Chapter I of Title 11 of the *Code of Federal Regulations* are amended as follows:

PART 9003—ELIGIBILITY FOR PAYMENTS

1. The authority citation for Part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

2. In § 9003.3, the headings for paragraphs (a) and (a)(1) are republished, and the section heading, the introductory text of paragraph (a)(1)(i), and paragraph (a)(1)(i)(A) are revised to read as follows:

§ 9003.3 Allowable contributions; General election legal and accounting compliance fund.

(a) *Legal and accounting compliance fund—major party candidates.*

(1) *Sources.*

(i) A major party candidate, or an individual who is seeking the nomination of a major party, may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A general election legal and accounting compliance fund (''GELAC'') may be established by such individual prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States. Before June 1 of the calendar year in which a Presidential general election is held, contributions may only be deposited in the GELAC if they are made for the primary and exceed the contributor's contribution limits for the primary and are lawfully redesignated by the contributor for the GELAC pursuant to 11 CFR 110.1.

(A) All solicitations for contributions to the GELAC shall clearly state that Federal law prohibits private contributions from being used for the candidate's election and that contributions will be used solely for legal and accounting services to ensure compliance with Federal law, and shall clearly state how contribution checks should be made payable. Contributions shall not be solicited for the GELAC before June 1 of the calendar year in which a Presidential general election is held. If the candidate does not become the nominee, all contributions accepted for the GELAC, including redesignated contributions, shall be refunded within sixty (60) days after the candidate's date of ineligibility.

* * * * *

3. Section 9003.5 is amended by revising paragraphs (b)(1)(iv) and (b)(3)(ii) to read as follows:

§ 9003.5 Documentation of disbursements.

* * * * *

(b) * * *

(1) * * *

(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check negotiated by the payee.

* * * * *

(3) * * *

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased. Examples of acceptable and unacceptable descriptions of goods and services purchased are listed at 11 CFR 104.3(b)(3)(i)(B).

* * * * *

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

4. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

5. Section 9004.4 is amended by revising paragraphs (a)(4) and (b)(8) to read as follows:

§ 9004.4 Use of payments.

(a) * * *

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies; and

(ii) Costs associated with the candidate's general election campaign and incurred by the candidate prior to the end of the expenditure report period for which written arrangement or commitment was made on or before the close of the expenditure report period.

* * * * *

(b) * * *

(8) *Lost, misplaced, or stolen items.* The cost of lost, misplaced, or stolen items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

6. Section 9004.9 is amended by revising paragraph (d)(1) to read as follows:

§ 9004.9 Net outstanding qualified campaign expenses.

* * * * *

(d) (1) *Capital assets and assets purchased from the primary election committee.*

(i) For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as ''other assets'' under paragraph (d)(2) of this section. Capital assets include items such as computer systems and telecommunications systems, if the equipment is used together and if the total cost of all components that are used together exceeds $2000. A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets shall be considered to be 60% of the total original cost of such items when acquired, except that items received after the end of the expenditure report period must be valued at their fair market value on the date acquired. A candidate may claim a lower fair market value for a capital asset by listing that capital asset on the statement separately and demonstrating, through documentation, the lower fair market value.

(ii) If capital assets are obtained from the candidate's primary election committee, the purchase price shall be considered to be 60% of the original cost of such assets to the candidate's primary election committee. For purposes of the statement of net outstanding qualified campaign expenses filed after the end of the expenditure report period, the fair market value of capital assets obtained from the candidate's primary election committee shall be considered to be 20% of the original cost of such assets to the candidate's primary election committee.

(iii) Items purchased from the primary election committee that are not capital assets, and also are not other assets under paragraph (d)(2) of this section, shall be listed on an inventory that states their valuation.

* * * * *

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

7. The authority citation for part 9008 continues to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8); 26 U.S.C. 9008 and 9009(b).

8. Section 9008.7 is amended by adding new paragraph (c) to read as follows:

§ 9008.7 Use of funds.

* * * * *

(c) *Lost, misplaced, or stolen items.* The cost of lost, misplaced, or stolen items may not be defrayed with public funds under certain circumstances. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

9. Section 9008.14 is revised to read as follows:

§ 9008.14 Petitions for rehearing; stays of repayment determinations.

Petitions for rehearing following the Commission's repayment determination and requests for stays of repayment determinations will be governed by the procedures set forth at 11 CFR 9007.5 and 9038.5. The Commission will afford convention committees the same rights as are provided to publicly funded candidates under 11 CFR 9007.5 and 9038.5.

10. Section 9008.52 is amended by republishing the heading of paragraph (c), and by revising the introductory text of paragraph (c)(1) to read as follows:

§ 9008.52 Receipts and disbursements of host committees.

* * * * *

(c) *Receipt of donations from local businesses and organizations.* (1) Local businesses (including banks), local labor organizations, and other local organizations or individuals who maintain a local residence or who work for a local business, local labor organization, or local organization may donate funds or make in-kind donations to a host committee to be used for the following purposes:

* * * * *

11. Section 9008.53 is amended by republishing the heading of paragraph (b), and by revising the introductory language of paragraph (b)(1) to read as follows:

§ 9008.53 Receipts and disbursements of government agencies and municipal corporations.

* * * * *

(b) *Receipt of donations to a separate fund or account.* (1) Local businesses (including banks), local labor organizations, and other local organizations or individuals who maintain a local residence or who work for a local business, local labor organization, or local organization may donate funds or make in-kind donations to a separate fund or account of a government agency or municipality to pay for expenses listed in 11 CFR 9008.52(c), provided that:

* * * * *

PART 9032—DEFINITIONS

12. The authority citation for part 9032 continues to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

13. Section 9032.11 is revised to read as follows:

§ 9032.11 State.

State means each State of the United States, Puerto Rico, American Samoa, the Virgin Islands, the District of Columbia, and Guam.

PART 9033—ELIGIBILITY FOR PAYMENTS

14. The authority citation for Part 9033 continues to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

15. Section 9033.11 is amended by revising paragraphs (b)(1)(iv) and (b)(3)(ii) to read as follows:

§ 9033.11 Documentation of disbursements.

* * * * *

(b) * * *

(1) * * *

(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check negotiated by the payee.

* * * * *

(3) * * *

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased. Examples of acceptable and unacceptable descriptions of goods and services purchased are listed at 11 CFR 104.3(b)(3)(i)(B).

* * * * *

PART 9034—ENTITLEMENTS

16. The authority citation for Part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

17. Section 9034.4 is amended by revising paragraph (a)(3)(iii), paragraph (b)(8), the heading and introductory text of paragraph (e), and paragraph (e)(6)(i) to read as follows:

§ 9034.4 Use of contributions and matching payments.

(a) * * *

(3) * * *

(iii) In the case of a candidate who does not receive public funding for the general election, for purposes of the expenditure limitations set forth in 11 CFR 9035.1, 100% of salary, overhead and computer expenses incurred after a candidate's date of ineligibility may be treated as exempt legal and accounting compliance expenses beginning with the first full reporting period after the candidate's date of ineligibility. For candidates who continue to campaign or re-establish eligibility, this paragraph shall not apply to expenses incurred during the period between the date of ineligibility and the date on which the candidate either re-establishes eligibility or ceases to continue to campaign. For purposes of the expenditure limitations set forth in 11 CFR 9035.1, candidates who receive public funding for the general election must wait until the end of the expenditure report period described in 11 CFR 9002.12 before they may treat 100% of salary, overhead and computer expenses as exempt legal and accounting compliance expenses.

* * * * *

(b) * * *

(8) *Lost, misplaced, or stolen items.* The cost of lost, misplaced, or stolen items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

* * * * *

(e) *Attribution of expenditures between the primary and the general election spending limits.* The following rules apply to candidates who receive public funding in either the primary or the general election, or both.

* * * * *

(6) * * *

(i) *Solicitations and fundraising costs.* The costs of fundraising, including that of events and solicitation costs, shall be attributed to the primary election or to the GELAC, depending on the purposes of the fundraising. If a candidate raises funds for both the primary election and for the GELAC in a single communication or through a single fundraising event, the allocation of fundraising costs and the distribution of net proceeds will be made in the same manner as described in 11 CFR 9034.8(c)(8)(i) and (ii).

* * * * *

18. Section 9034.5 is amended by revising paragraph (c)(1) to read as follows:

§ 9034.5 Net outstanding campaign obligations.

* * * * *

(c) (1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when received by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as ''other assets'' under paragraph (c)(2) of this section. Capital assets include items such as computer systems and telecommunications systems, if the equipment is used together and if the total cost of all components that are used together exceeds $2000. A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets shall be considered to be 60% of the total original cost of such items when acquired, except that items received after the date of ineligibility must be valued at their fair market value on the date received. A candidate may claim a lower fair market value for a capital asset by listing that capital asset on the statement separately and demonstrating, through documentation, the lower fair market value. If the candidate receives public funding for the general election, a lower fair market value shall not be claimed under this section for any capital assets transferred or sold to the candidate's general election committee.

* * * * *

PART 9035—EXPENDITURE LIMITATIONS

19. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

20. Section 9035.1 is revised to read as follows:

§ 9035.1 Campaign expenditure limitation; compliance and fundraising exemptions.

(a) *Spending limit.* (1) No candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed $10,000,000 (as adjusted under 2 U.S.C. 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed the greater of: 16 cents (as adjusted under 2 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or $200,000 (as adjusted under 2 U.S.C. 441a(c)).

(2) The Commission will calculate the amount of expenditures attributable to the overall expenditure limit or to a particular state using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(b) *Allocation of expenditures.* Each candidate receiving or expecting to receive matching funds under this subchapter shall also allocate his or her expenditures in accordance with the provisions of 11 CFR 106.2.

(c) *Compliance and fundraising exemptions.* (1) A candidate may exclude from the overall expenditure limitation set forth in paragraph (a) of this section an amount equal to 15% of the overall expenditure limitation as exempt legal and accounting compliance costs under 11 CFR 100.8(b)(15).

(2) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 the amount of exempt fundraising costs specified in 11 CFR 100.8(b)(21)(iii).

(d) *Candidates not receiving matching funds.* The expenditure limitations of 11 CFR 9035.1 shall not apply to a candidate who does not receive matching funds at any time during the matching payment period.

21. The title of Part 9036 is revised to read as follows:

PART 9036—REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION

22. The authority citation for Part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

23. Section 9036.1 is amended by revising paragraph (b)(3) to read as follows:

§ 9036.1 Threshold submission.

* * * * *

(b) * * *

(3) The candidate shall submit a full-size photocopy of each check or written instrument and of supporting documentation in accordance with 11 CFR 9034.2 for each contribution that the candidate submits to establish eligibility for matching funds. For purposes of the threshold submission, the photocopies shall be segregated alphabetically by contributor within each State, and shall be accompanied by and referenced to copies of the relevant deposit slips. In lieu of submitting photocopies, the candidate may submit digital images of checks and other materials in accordance with the procedures specified in 11 CFR 9036.2(b)(1)(vi). Digital images of contributions do not need to be segregated alphabetically by contributor within each State.

* * * * *

24. Section 9036.2 is amended by revising paragraph (b)(1)(vi) to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

* * * * *

(b) * * *

(1) * * *

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list. In lieu of submitting photocopies, the candidate may submit digital images of checks, written instruments and deposit slips as specified in the Computerized Magnetic Media Requirements. The candidate may also submit digital images of contributor redesignations, reattributions and supporting statements and materials needed to verify the matchability of contributions. The candidate shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission, and shall include digital images of every contribution received and imaged on or after the date of the previous matching fund request. Contributions and other documentation not imaged shall be submitted in photocopy form. The candidate shall maintain the originals of all contributor redesignations, reattributions and supporting statements and materials that are submitted for matching as digital images.

* * * * *

Dated: September 7, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–23578 Filed 9–10–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE153, Special Condition 23–096–SC]

Special Conditions; Meridian PA–46–400TP

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960 for a type certificate for the Meridian PA–46–400TP airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays for which the applicable regulations do not contain adequate or appropriate airworthiness 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 the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is August 27, 1999. Comments must be received on or before October 13, 1999.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE153, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE153. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE153.'' The postcard will be date stamped and returned to the commenter.

Background

On February 12, 1997, The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960, made an application to the FAA for a new Type Certificate for the Meridian PA–46–400TP airplane. The Meridian is a derivative of the PA–46–350P Malibu Mirage currently approved under TC No. A25SO. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, The New Piper Aircraft, Inc., must show that the Meridian PA–

46–400TP meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Meridian PA–6–400TP:

Federal Aviation Regulations part 23 effective February 1, 1965, as amended by Amendments 23–1 through 23–52; Federal Aviation Regulations part 34 effective September 10, 1990, as amended by the amendment in effect on the date of certification; Federal Aviation Regulations part 36 effective December 1, 1969, as amended by amendment 36–1 through the amendment in effect on the day of certification; The Noise Control Act of 1972; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions are normally issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), and become a 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 the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The New Piper Aircraft, Inc., plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

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 root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems, or both, that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to The New Piper Aircraft, Inc., Meridian PA–46–400TP. Should The New Piper Aircraft, Inc., apply at a later date for a change to the type certificate to include any other model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. 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 these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and 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 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.17; and 14 CFR part 11, §§ 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for The New Piper Aircraft, Inc., Meridian PA–46–400TP airplane:

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).

Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic 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 Kansas City, Missouri on August 27, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23720 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE149; Special Condition 23–097–SC]

Special Conditions: Soloy Corporation Model Pathfinder 21 Airplane; Airframe.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Soloy Corporation Model Pathfinder 21 airplane. The Model Pathfinder 21 airplane is a Cessna Model 208B airplane as modified by Soloy Corporation to be considered as a multiengine, part 23, normal category airplane. The Model Pathfinder 21 airplane will have a novel or unusual design features associated with installation of the Soloy Dual Pac propulsion system, which consists of two Pratt & Whitney Canada Model PT6D–114A turboprop engines driving a single, Hartzell, five-blade propeller. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Dave Keenan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 601 East 12th Street, Kansas City, Missouri 64106; 816–426–5688, fax 816–426–2169.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1992, Soloy Corporation applied for a supplemental type certificate (STC) for the Model Pathfinder 21 airplane, which would modify the Cessna Model 208B airplane by installing the Soloy Dual Pac propulsion system. This propulsion system consists of two Pratt & Whitney Canada (PWC) Model PT6D–114A turboprop engines driving a single, Hartzell, five-blade propeller through a combining gearbox. Soloy Corporation is seeking approval for this airplane, equipped with a Soloy Dual Pac propulsion system, as a normal category multiengine airplane. Title 14 CFR part 23 is not adequate to address a multiengine airplane with a single propeller. Hence, the requirement for these proposed special conditions, which will be applied in addition to the applicable sections of part 23.

The Soloy Dual Pac propulsion system is mounted in the nose of the Model Pathfinder 21 airplane. With this arrangement, an engine failure does not cause an asymmetric thrust condition that would exist with a conventional twin turboprop airplane. This asymmetric thrust compounds the flightcrew workload following an engine failure. The Model Pathfinder 21 airplane configuration has the potential to substantially reduce this workload.

Since the Model Pathfinder 21 airplane produces only centerline thrust, the only direct airplane control implications of an engine failure are the change in torque reaction and propeller slipstream effect. These transient characteristics require substantially less crew action to correct than an asymmetric thrust condition and do not require constant effort by the flightcrew to maintain control of the airplane for the remainder of the flight.

Safety Analysis

The FAA has conducted a safety analysis that recognizes both the advantages and disadvantages of the proposed Model Pathfinder 21 airplane. The scope of this safety analysis was limited to the areas affected by the unique propulsion system installation and assumes compliance with the design-related requirements of these proposed special conditions. The FAA examined the accident and incident history of small twin turboprop operations for the years of 1983 to 1994 in the United States and the United Kingdom. The FAA evaluated each event and determined if the outcome,

given the same pilot, weather, and airplane except with centerline thrust and one propeller, would have been more favorable, less favorable, or unchanged. Examination of the incident data revealed a number of failure modes that, if not addressed as part of the Model Pathfinder 21 airplane design, could result in a potential increase in the number of accidents for the Model Pathfinder 21 airplane compared to the current fleet. Examples of such failure modes include loss of a propeller blade tip or failure of the propeller control system. Although these proposed special conditions contain provisions to prevent catastrophic failures of the remaining non-fail-safe components of the Model Pathfinder 21 airplane after compliance with the design related requirements, the analysis assumes that these components will fail in a similar manner to the failures contained in the incident data. Given these assumptions, the FAA determined that the projected accident rate of the Model Pathfinder 21 airplane would be equal to or lower than the current small twin turboprop airplane fleet. Considering that analysis, the FAA has determined that the advantages of centerline thrust compensate for the disadvantages of the non-fail-safe design features. Once that determination was made, these proposed special conditions were formulated with the objective of substantially reducing or eliminating risks associated with the non-redundant systems and components of the Model Pathfinder 21 airplane design that have been identified and providing a level of safety equivalent to that of conventional multiengine airplanes.

The FAA data review conducted to prepare these proposed special conditions is applicable only to the Model Pathfinder 21 airplane. For the concept of a single-propeller, multiengine airplane to be extended to other projects, a separate analysis of the accident and incident data for similarly sized airplanes would be required. If the advantages of centerline thrust compensated for the disadvantages of the non-fail-safe components, based on the service history of similarly sized airplanes, development of separate special conditions would be required.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Soloy Corporation must show that the Model Pathfinder 21 airplane continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate (TC) Data Sheet A37CE or the applicable regulations in effect on the date of application for change. The regulations incorporated by reference are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in TC No. A37CE are as follows:

The type certification basis for Cessna Model 208B airplanes shown on TC Data Sheet A37CE for parts not changed or not affected by the changes proposed by Soloy Corporation is part 23 of the Federal Aviation Regulations dated February 1, 1965, as amended by Amendments 23–1 through 23–28; part 36 dated December 1, 1969, as amended by Amendments 36–1 through 36–18; Special Federal Aviation Regulations (SFAR) 27 dated February 1, 1974, as amended by Amendments 27–1 through 27–4. Soloy Corporation must show that the Model Pathfinder 21 airplane meets the applicable provisions of part 23, including multiengine designated sections, as amended by Amendment 23–42 (the Pathfinder 21 type certification basis is based on the date of STC application: February 6, 1992) for parts changed or affected by the change. Soloy Corporation has also elected to comply with § 23.561, Emergency Landing Conditions—General (Amendment 23–48); § 23.731, Wheels (Amendment 23–45); § 23.733, Tires (Amendment 23–45); § 23.783, Doors (Amendment. 23–49); § 23.807, Emergency Exits (Amendment 23–49); § 23.811, Emergency Exit Marking (Amendment 23–46); § 23.901, Installation (Amendment 23–51); § 23.955, Fuel Flow (Amendment 23–51); § 23.1041, Cooling—General (Amendment 23–51); § 23.1091, Air Induction System (Amendment 23–51); § 23.1181, Designated Fire Zones; Regions Included (Amendment 23–51); § 23.1189, Shutoff Means (Amendment 23–43); § 23.1305, Powerplant Instruments (Amendment 23–52); and § 23.1351, Electrical Systems and Equipment—General (Amendment 23–49). The type certification basis for the Model Pathfinder 21 airplane also includes parts 34 and 36, each as amended at the time of certification. Soloy Corporation may also elect to comply with subsequent part 23 requirements to facilitate operators' compliance with corresponding part 135 requirements. The type certification basis for this airplane will include exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (part 23, as amended) do not contain adequate or appropriate safety standards for the Model Pathfinder 21 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by § 11.28 and § 11.29(b), 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 the applicant apply for an STC to modify any other model included on the same TC to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

The Soloy Dual Pac was certified as a propulsion system under part 33 and special conditions in Docket No. 93–ANE–14; No. 33–ANE–01 (62 FR 7335, February 19, 1997) under STC No. SE00482SE to the PWC Model PT6 engine TC E4EA. Those special conditions were created in recognition of the novel and unusual features of the proposal, specifically the combining gearbox.

Novel or Unusual Design Features

The Model Pathfinder 21 will incorporate a novel or unusual design feature by installing the Soloy Dual Pac propulsion system, which consists of two PWC Model PT6D–114A engines driving a single, Hartzell, five-blade propeller through a Soloy-designed combining gearbox. The combining gearbox incorporates redundant freewheeling, drive, governing, and lubricating systems. A system of one-way clutches both prevents the propeller shaft from driving the engine input shafts and allows either engine to drive the propeller should the other engine fail.

Propulsion System

The propulsion drive system includes all parts necessary to transmit power from the engines to the propeller shaft. This includes couplings, universal joints, drive shafts, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the propulsion drive system. The propulsion drive system for this multiengine installation must be designed with a ''continue to run'' philosophy. This means that it must be able to power the propeller after failure of one engine or failure in one side of the drive system, including any gear, bearing, or element expected to fail. Common failures, such as oil pressure loss or gear tooth failure, in the

propulsion drive system must not prevent the propulsion system from providing adequate thrust. These design requirements, and other propulsion drive system requirements, are included in the part 33 special conditions, and, therefore, are required as part of these proposed special conditions.

Section 23.903(b)(1) states, in part, ''Design precautions must be taken to minimize the hazards to the airplane in the event of a rotor failure.'' Part 33 containment requirements address blade failures but do not require containment of failed rotor disks; therefore, § 23.903(b)(1) requires that airplane manufacturers minimize the hazards in the event of a rotor failure. This is done by locating critical systems and components out of impact areas as much as possible. The separation inherent in conventional twin engine arrangements by locating the engines on opposite sides of the fuselage provides good protection from engine-to-engine damage. Although most multiengine installations have the potential for an uncontained failure of one engine damaging the other engine, service history has shown that the risk of striking the opposite engine is extremely low.

The Model Pathfinder 21 airplane propulsion system installation does not have the inherent engine-to-engine isolation of a conventional twin turboprop airplane. For the Model Pathfinder 21 airplane to obtain a level of safety equivalent to that of a conventional multiengine airplane, the effects of rotor failure must be addressed. Soloy Corporation must demonstrate that the engine type in relevant installations has at least ten million hours of service time without a high energy rotor failure (for example, disks, hubs, compressor wheels, and so forth). Additionally, for any lower energy fragments released during this extensive service life of the engine (for example, blades), a barrier must be placed between the engines to contain these low energy fragments. Even after installation of a barrier, engine-to-engine isolation following failure of either engine could be compromised through the common mount system or shared system interfaces such as firewalls, electrical busses, or cowlings. Soloy Corporation must, therefore, demonstrate any loads transmitted through the common mount system as a result of an engine failure do not prevent continued safe flight and landing with the operating engine.

Section 23.903(b)(1) also addresses damage caused by engine case burn-through. Engine case burn-through results in a concentrated flame that has the capability to burn through the firewall mandated by § 23.1191; therefore, § 23.903(b)(1) requires that design precautions must be taken to minimize the hazards to the airplane in the event of a fire originating in the engine that burns through the engine case. Similar to uncontained engine failures, the conventional multiengine airplane arrangement provides inherent protection from engine-to-engine damage associated with engine case burn-through by placing the engines on opposite sides of the fuselage. The Model Pathfinder 21 airplane propulsion system does not have this inherent isolation; therefore, the FAA is requiring that engine type in a relevant installation to have either at least ten million hours of service time without an engine case burn-through, or a firewall able to protect the operating engine from engine case burn-through installed between the engines.

Soloy Corporation is not required to show compliance to § 21.35, per § 21.115 because the Model Pathfinder 21 airplane certification is being conducted under an STC project. Section 21.35(f)(1), Flight Tests, requires aircraft incorporating turbine engines of a type not previously used in a type certificated aircraft to operate for at least 300 hours with a full complement of engines that conform to a type certificate as part of the certification flight test. The propulsion system installation is, however, different from any other airplane previously certified; therefore, the FAA is requiring as part of these special conditions that Soloy Corporation show compliance with § 21.35(f)(1).

Propeller Installation

As demonstrated by the data discussed in the Safety Analysis section, propeller blade failures near the hub result in substantial airplane damage on a conventional twin turboprop airplane. One of the eight events was catastrophic. Blade debris has damaged critical components and structure of the airplane, and large unbalance loads in the propeller have led to engine, mount, and wing structural failure. In contrast, service history has demonstrated that blade tip failures are not necessarily catastrophic on a conventional multiengine airplane because the flightcrew is able to secure the engine with the failed propeller and safely land the airplane. However, if the Model Pathfinder 21 airplane's single propeller failed near the tip, the failure would be likely to result in a catastrophic accident caused by the total loss of thrust capability and severe vibration. Other propeller system structural failures would be equally catastrophic; therefore, steps must be taken to reduce the potential for propeller system structural failures.

As discussed earlier, the FAA has determined additional testing is required for non-redundant components to ensure that equivalency to the fail-safe and isolation requirements of § 23.903(c) is met. The Model Pathfinder 21 airplane's single propeller system must be installed and maintained in such a manner as to substantially reduce or eliminate the occurrence of failures that would preclude continued safe flight and landing. To ensure the propeller installation and production and maintenance programs are sufficient to achieve the fail-safe equivalency requirement, these proposed special conditions include a 2,500 cycle validation test. This corresponds to the FAA's estimated annual usage for a turboprop airplane operating in scheduled service. An airplane cycle includes idle, takeoff, climb, cruise, descent, and reverse. The test must utilize production parts installed on the engine and should include a wide range of ambient and wind conditions, several full stops, and validation of scheduled and unscheduled maintenance practices.

Furthermore, these special conditions require identification of the critical parts of the propeller assembly, which are components whose failure during ground or flight operation could cause a catastrophic effect on the airplane, including loss of the ability to produce controllable thrust. The FAA is proposing to require that a critical parts plan, modeled after plans required by Joint Aviation Requirements 27 and 29 for critical rotorcraft components, be established and implemented for the critical components of the propeller assembly. This plan draws the attention of the personnel involved in the design, manufacture, maintenance, and overhaul of a critical part to the special nature of the part. The plan should define the details of relevant special instructions to be included in the Instructions for Continued Airworthiness. The Instructions for Continued Airworthiness, required by § 23.1529, should contain life limits, mandatory overhaul intervals, and conservative damage limits for return to service and repair, as appropriate, for the critical parts identified in accordance with these special conditions.

On a conventional multiengine airplane, the flightcrew will secure an engine to minimize effects of propeller imbalance. Most of these airplanes also incorporate quick acting manual or

automatic propeller feathering systems that further reduce the time the airplane is exposed to the effects of propeller imbalance. In addition to the propeller blade failures discussed earlier, the unbalanced condition could be caused by a propeller system failure such as loss of a de-icing boot, malfunction of a de-icing boot in icing conditions, an oil leak into a blade butt, asymmetric blade pitch, or a failure in a counterweight attachment. The Model Pathfinder 21 airplane design does not provide any means to reduce the vibration produced by an unbalanced propeller; therefore, these proposed special conditions require that the engines, propulsion drive system, engine mounts, primary airframe structure, and critical systems must be designed to function safely in the high vibration environment generated by those less severe propeller failures. In addition, the degree of flight deck vibration must not jeopardize the crew's ability to continue to operate the airplane in a safe manner. Component failures that generate vibrations beyond the capability of the airplane must be addressed as a critical part in the same manner as required for propeller blade failures.

Propeller Control System

Propeller control system failures on a conventional twin engine airplane may result in a one-engine-inoperative configuration. To ensure an equivalent level of safety in the event of a propeller control system failure, these special conditions require that the Model Pathfinder 21 airplane propulsion system be designed such that the airplane meets the one-engine-inoperative requirements of § 23.53 and § 23.67 after the most critical propeller control system failure.

There are several means to accomplish these special condition elements. Soloy Corporation plans to address them by providing a mechanical high-pitch stop, which would be set to a ''get home'' pitch position, thereby preventing the propeller blades from rotating to a feather-pitch position when oil pressure is lost in the propeller control system. This would allow the propeller to continue to produce a minimum amount of thrust as a fixed-pitch propeller. These special conditions provide design requirements that the FAA has determined are critical to a default fixed-pitch position feature. These include maintaining engine and propeller limits following an automatic or manual pitch change, the ability to manually select and deselect the default fixed-pitch position in flight in the event of a propeller control system failure that does not result in a loss of oil pressure, and the means to indicate to the flightcrew when the propeller is at the default fixed-pitch position.

Propulsion Instrumentation

On a conventional multiengine airplane, the pilot has positive indication of an inoperative engine created by the asymmetric thrust condition. The airplane will not yaw when an engine or a portion of the propulsion drive system fails because of the centerline thrust of the Model Pathfinder 21 airplane propulsion system installation. The flightcrew will have to rely on other means to determine which engine or propulsion drive system element has failed so as to secure the correct engine; therefore, these special conditions require that a positive indication of an inoperative engine or a failed portion of the propulsion drive system must be provided.

Section 23.1305 requires instruments for the fuel system, engine oil system, fire protection system, and propeller control system. This rule is intended for powerplants consisting of a single-engine, gearbox, and propeller. To protect the portions of the propulsion drive system that are independent of the engines, additional instrumentation, which includes oil pressure, oil quantity, oil temperature, propeller speed, gearbox torque, and chip detection, is required.

Fire Protection System

On a conventional twin engine airplane, the engines are sufficiently separated to eliminate the possibility of a fire spreading from one engine to another. Since the Soloy Dual Pac propulsion system is installed in the nose of the airplane, the engines are separated only by a firewall. The fire protection system of the Model Pathfinder 21 airplane must include features to isolate each fire zone from any other zone and the airplane to maintain isolation of the engines during a fire; therefore, these special conditions mandate that the firewall required by § 23.1191 be extended to provide firewall isolation between either engine and the propulsion drive system. These special conditions require that heat radiating from a fire originating in any fire zone must not affect components in adjacent compartments in such a way as to endanger the airplane.

Airplane Performance

Section 23.67, and paragraphs in § 23.53, § 23.69 and § 23.75, provide performance requirements for multiengine airplanes with one engine inoperative. These rules are not adequate for multiengine, single propeller airplanes. In these special conditions, the airplane configuration requirements specified in § 23.53(b)(1), § 23.67(c)(1), § 23.69(b), and § 23.75(g) have been adapted to accommodate the propeller system of the Model Pathfinder 21 airplane to ensure a level of safety equivalent to that of conventional multiengine airplanes.

Airspeed Indicator

Section 23.1545(b)(5) provides one-engine-inoperative marking requirements for the airspeed indicator. This rule is not adequate to address critical propeller control system failures on the Model Pathfinder 21 airplane. As a result, these special conditions require that the airspeed markings required by § 23.1545(b)(5) be based on the most critical flight condition between one engine inoperative or a failed propeller control system in order to ensure a level of safety equivalent to that of conventional multiengine airplanes.

Airplane Flight Manual

Sections 23.1585 and 23.1587 require pertinent information to be included in the Airplane Flight Manual (AFM). These rules are not adequate to address critical propeller control system failures on the Model Pathfinder 21 airplane. As a result, these special conditions require that the critical procedures and information required by § 23.1585, paragraph (c), and § 23.1587, paragraphs (c)(2) and (c)(4), include consideration of these critical propeller control system failures in order to ensure a level of safety equivalent to that of conventional multiengine airplanes.

Discussion of Comments

Notice of proposed special conditions, Notice No. 23–98–05–SC, Docket No. CE149, for the Soloy Corporation Model Pathfinder 21 airplane was published in the **Federal Register** on March 25, 1999 (64 FR 14401). On April 21, 1999, Soloy Corporation requested that the comment period be extended to allow them sufficient time to comment on the proposals. The FAA reopened the comment period in the **Federal Register** dated June 1, 1999 (64 FR 29247). The new comment period closed July 1, 1999. The following is a summary of the comments received and a response to each comment.

Only one commenter, Hartzell Propeller, Inc., responded to the notice of proposed special conditions. Their comments are summarized below:

1. *Comment:* This requirement has no clearly stated objectives. Is the purpose of each cycle to exercise the blade pitch mechanism or to subject the propeller to

fatigue cycles? This propeller is derived from a model that has been in service since the 1970's and has accumulated more than 4 million hours. From the propeller's perspective, there is no apparent benefit in adding 2,500 cycles to this experience.

FAA Response: The purpose of this test is not only for the propeller alone, but also for the entire propulsion system of the Pathfinder 21 airplane. The object of this test is to establish the reliability of the engines, combining gearbox, and the propeller system together, as installed on the Pathfinder 21 airplane. This propulsion system reliability is being imposed due to a multiengine aircraft having only a single propeller.

2. *Comment:* Balance criteria is very subjective. While most could agree when something is within acceptable limits, people's tolerance for unbalance can vary widely, making this requirement difficult to quantify. The ability of the propeller and airframe structure to withstand unbalance far exceeds that of the crew and passengers to tolerate it.

FAA Response: Since this design is being classified as a multiengine aircraft, the flight crew will not have the ability to shutdown and feather an engine that is running rough due to some form of imbalance and continue on with the remaining powerplant. A Pathfinder 21 flightcrew may be required to operate the propulsion system at higher levels of imbalance than might be required of a conventional twin-engine airplane. This special condition is an attempt to quantify those levels of imbalance.

3. *Comment:* There is no § 23.53(b)(1)(ii). The text of § 23.53(b)(1) specifically states both engines are operative. Section 23.67 makes specific reference to reciprocating engines and weights below 6,000 pounds, neither of which apply to the Pathfinder 21.

FAA Response: Section 23.53(b)(1)(ii), Takeoff speeds, in Amendment 23–34 specifically states, ''Each normal, utility, and acrobatic category airplane, upon reaching a height of 50 feet above the takeoff surface, must have a speed of not less than the following: For multiengine airplanes, the higher of 1.3 V_{S1}, or any lesser speed, not less than V_X plus 4 knots, that is shown to be safe under all conditions, including turbulence and complete engine failure.''

Section 23.67(c), Climb: one engine inoperative, in Amendment 23–42 specifically states, ''For normal, utility, and acrobatic category turbine engine-powered multiengine airplanes the following apply: The steady climb gradient must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant, with the airplane in the configuration as prescribed in paragraph (a) of this section. Each airplane must be able to maintain at least the following climb gradients with the airplane in the configuration prescribed in paragraph (a) of this section: 1.5 percent at a pressure altitude of 5,000 feet and a speed not less than 1.2 V_{S1}, and at standard temperature (41°F); and 0.75 percent at a pressure altitude of 5,000 feet at a speed not less than 1.2 V_{S1} and 81°F (standard temperature plus 40°F). The minimum climb gradient specified in paragraphs (c)(2)(i) and (ii) of this section must vary linearly between 41°F and 81°F and must change at the same rate up to the maximum operating temperature approved for the airplane.''

4. *Comment:* Any means to provide a secondary method to select blade angle would affect the type design of the propeller and introduce unconventional features which could adversely affect the established reliability of the propeller.

FAA Response: The FAA agrees and this requirement has been removed from the special conditions.

5. *Comment:* The special conditions state that ''a means to indicate to the flight crew when the propeller is at the default fixed-pitch position must be provided.'' The obvious signal that the propeller has defaulted to a fixed-pitch condition is a reduction in RPM.

FAA Response: The FAA agrees and this requirement has been removed from the special conditions.

Applicability

As discussed above, these special conditions are applicable to the Soloy Corporation Model Pathfinder 21 airplane . Should Soloy Corporation apply at a later date for a supplemental type certificate to modify any other model included on TC No. A37CE, the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna Model 208B airplanes modified by the Soloy Corporation.

1. Propulsion System.

(a) Engine Requirements. The propulsion system must comply with the Soloy Corporation Soloy Dual Pac Engine Special Conditions (Docket No. 93–ANE–14; No. 33–ANE–01), published in **Federal Register**, Volume 62, Number 33, dated February 19, 1997.

(b) Engine Rotor Failure. In addition to showing compliance with 23.903(b)(1) (Amendment 23–40), compliance must be shown with the following:

(1) The engine type to be installed must be shown to have demonstrated a minimum of ten million hours of actual service experience in installations of equivalent or higher disk rotation loading without an uncontained high energy rotor failure; and a shield capable of preventing all fragments of an energy level that have been released during uncontained engine failures experienced in service from impacting the adjacent engine must be installed; and

(2) It must be shown that the adjacent engine is not affected following any expected engine failure.

(c) Engine case Burn-Through. In addition to showing compliance with § 23.903(b)(1) (Amendment 23–40), the engine type to be installed must be shown to have demonstrated a minimum of ten million hours of actual service experience in installations of equivalent or higher combustor pressures and temperatures without an engine case burn-through event; or a firewall capable of containing a fire originating in the engine that burns through the engine case must be installed between the engines.

(d) Propulsion System Function and Reliability Testing. The applicant must complete the testing required by § 21.35(f)(1) (Amendment 21–51).

2. Propeller Installation.

(a) The applicant must complete a 2,500 airplane cycle evaluation of the propeller installation. This evaluation may be accomplished on the airplane in a combination of ground and flight

cycles or on a ground test facility. If the testing is accomplished on a ground test facility, the test configuration must include sufficient interfacing system hardware to simulate the actual airplane installation, including the engines, propulsion drive system, and mount system.

(b) Critical Parts. (1) The applicant must define the critical parts of the propeller assembly. Critical parts are those parts whose failure during ground or flight operation could cause a catastrophic effect to the airplane, including loss of the ability to produce controllable thrust. In addition, parts, of which failure or probable combinations of failures would result in a propeller unbalance greater than that defined under paragraph (c), are classified as critical parts.

(2) The applicant must develop and implement a plan to ensure that the critical parts identified in paragraph (b)(1) are controlled during design, manufacture, and throughout their service life so that the risk of failure in service is minimized.

(c) Propeller Unbalance. The applicant must define the maximum allowable propeller unbalance that will not cause damage to the engines, propulsion drive system, engine mounts, primary airframe structure, or to critical equipment that would jeopardize the continued safe flight and landing of the airplane. Furthermore, the degree of flight deck vibration caused by this unbalance condition must not jeopardize the crew's ability to continue to operate the airplane in a safe manner.

3. Propeller Control System.

(a) The propeller control system must be independent of the turbine engines such that a failure in either turbine engine or an engine control system will not result in loss of propeller control.

(b) The propeller control system must be designed so that the occurrence of any single failure or probable combination of failures in the system which would prevent the propulsion system from producing thrust at a level required to meet § 23.53(b)(1)(ii) (Amendment 23–34) and § 23.67(c) (Amendment 23–42) is extremely improbable.

(c) The propeller control system must be designed to implement a default fixed-propeller pitch position in the event of a propeller control system failure:

(1) A pitch change to the default fixed-pitch position must not exceed any limitation established as part of the engine and propeller type certificates;

4. Propulsion Instrumentation.

(a) Engine Failure Indication. A positive means must be provided to indicate when an engine is no longer able to provide torque to the propeller. This means may consist of instrumentation required by other sections of part 23 or these special conditions if it is determined that those instruments will readily alert the flightcrew when an engine is no longer able to provide torque to the propeller.

(b) Propulsion Drive System Instrumentation. In addition to the requirements of § 23.1305 (Amendment 23–52), the following instruments must be provided for any power gearbox or transmission:

(1) An oil pressure warning means and indicator for each pressure-lubricated gearbox;

(2) A low oil quantity indicator for each gearbox, if lubricant is self-contained;

(3) An oil temperature indicator;

(4) A tachometer for the propeller;

(5) A torquemeter for the transmission driving a propeller shaft if the sum of the maximum torque that each engine is capable of producing exceeds the maximum torque for which the propulsion drive system has been certified under 14 CFR part 33; and

(6) A chip detecting and indicating system for each gearbox.

5. Fire Protection System.

(a) In addition to § 23.1191(a) and (b) (not amended),

(1) Each engine must be isolated from the other engine and the propulsion drive system by firewalls, shrouds, or equivalent means; and

(2) Each firewall or shroud, including applicable portions of the engine cowling, must be constructed so that no hazardous quantity of liquid, gas, or flame can pass from the isolated compartment to the other engine or the propulsion drive system and so that firewall temperatures under all normal or failure conditions would not result in auto-ignition of flammable fluids and vapors present in the other engine and the propulsion drive system.

(b) Components, lines, and fittings located in the engine and propulsion drive system compartments must be constructed of such materials and located at such distances from the firewall that they will not suffer damage sufficient to endanger the airplane if a fire is present in an adjacent engine compartment.

6. Airplane Performance.

(a) In addition to § 23.53(b)(1) (Amendment 23–34), the airplane, upon reaching a height of 50 feet above the takeoff surface level, must have reached a speed of not less than 1.3 V_{S1}, or any lesser speed, not less than V_X plus 4 knots, that is shown to be safe under all conditions, including turbulence and the propeller control system failed in any configuration that is not extremely improbable.

(b) In lieu of § 23.67(c)(1) (Amendment 23–42), the steady climb gradient must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant, with the airplane in the following configurations:

(1) Critical engine inoperative, remaining engine at not more than maximum continuous power or thrust, wing flaps in the most favorable position, and means for controlling the engine cooling air supply in the position used in the engine cooling tests required by § 23.1041 (Amendment 23–7) through § 23.1045 (Amendment 23–7);

(2) Both engines operating normally and the propeller control system failed in any configuration that is not extremely improbable, the engines at not more than maximum continuous power or thrust, wing flaps in the most favorable position, and means for controlling the engine cooling air supply in the position used in the engine cooling tests required by § 23.1041 (Amendment 23–7) through § 23.1045 (Amendment 23–7).

(c) Enroute climb/descent.

(1) Compliance to § 23.69(a) (Amendment 23–50) must be shown.

(2) The steady gradient and rate of climb/descent must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant with—

(i) The critical engine inoperative, the engines at not more than maximum continuous power, the wing flaps retracted, and a climb speed not less than 1.2 V_{S1}.

(ii) Both engines operating normally and the propeller control system failed in any configuration that is not extremely improbable, the engines at not more than maximum continuous power, the wing flaps retracted, and a climb speed not less than 1.2 V_{S1}.

(d) In addition to § 23.75 (Amendment 23–42), the horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined as required in § 23.75 (Amendment 23–42) with both engines operating normally and the propeller control system failed in any configuration that is not extremely improbable.

7. Airspeed Indicator.

In lieu of the requirements of § 23.1545(b)(5) (Amendment 23–23), for one—engine inoperative or the propeller control system failed in any configuration that

is not extremely improbable, whichever is most critical, the best rate of climb speed V_Y, must be identified with a blue sector extending from the V_Y speed at sea level to the V_Y speed at an altitude of 5,000 feet, if V_Y is less than 100 feet per minute, or the highest 1,000-foot altitude (at or above 5,000 feet) at which the V_Y is 100 feet per minute or more. Each side of the sector must be labeled to show the altitude for the corresponding V_Y.

8. Airplane Flight Manual. (a) In addition to the requirements of § 23.1585(c) (Amendment 23–34), the following information must be included in the Airplane Flight Manual (AFM):

(1) Procedures for maintaining or recovering control of the airplane at speeds above and below V_{S1} with the propeller control system failed in any configuration that is not extremely improbable.

(2) Procedures for making a landing with the propeller control system failed in any configuration that is not extremely improbable and procedures for making a go-around with the propeller control system failed in any configuration that is not extremely improbable, if this latter maneuver can be performed safely; otherwise, a warning against attempting the maneuver.

(3) Procedures for obtaining the best performance with the propeller control system failed in any configuration that is not extremely improbable, including the effects of the airplane configuration.

(b) In lieu of the requirements of § 23.1587 (c)(2) and (c)(4) (Amendment 23–39), the following information must be furnished in the Airplane Flight Manual:

(1) The best rate-of-climb speed or the minimum rate-of-descent speed with one engine inoperative or the propeller control system failed in any configuration that is not extremely improbable, whichever is more critical.

(2) The steady rate or gradient of climb determined in Special Condition #6, Airplane Performance, paragraph (b)(1) or paragraph (b)(2), whichever is more critical, and the airspeed, power, and airplane configuration.

(c) The steady rate and gradient of climb determined in Special Condition #6, Airplane Performance, paragraph (c), must be furnished in the Airplane Flight Manual.

(d) The landing distance determined under § 23.75 (Amendment 23–42) or in Special Condition #6, Airplane Performance, paragraph (d) of these proposed special conditions, whichever is more critical.

Issued in Kansas City, Missouri on August 27, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23721 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–43]

Amendment to Class E Airspace; Sikeston, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Sikeston Memorial Municipal Airport, Sikeston, MO. A review of the Class E airspace are for Sikeston Memorial Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, the Sikeston Nondirectional Radio Beacon (NDB) and coordinates have been added to the text header and reference to the NDB is included in the airspace description.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), add the Sikeston NDB and coordinates, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, December 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 20, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–43, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Sikeston, MO. A review of the Class E airspace for Sikeston Memorial Municipal Airport, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Sikeston Memorial Municipal Airport, MO, will provide additional controlled airspace for aircraft operating under IFR, include the Sikeston NDB and coordinates, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal**

Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the captain **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–43.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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 Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE MO E5 Sikeston, MO [Revised]

Sikeston Memorial Municipal Airport, MO
[Lat. 36°53′56″N., long. 89°33′42″W.)
Sikeston NDB
[Lat. 36°53′16″N., long. 89°33′53″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Sikeston Memorial Municipal Airport and within 2.6 miles each side of the 021° bearing from the Sikeston NDB extending from the 6.5-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on September 3, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–23724 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–42]

Amendment to Class E Airspace; Malden, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Malden Municipal Airport, Malden, MO. A review of the Class E airspace area for Malden Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, December 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 20, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–42, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Malden, MO. A review of the Class E airspace for Malden Municipal Airport, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Malden Municipal Airport, MO, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–42.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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 Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE MO E5 Malden, MO [Revised]

Malden Municipal Airport, MO
(Lat. 36°36′02″N., long. 89°59′32″W.)
Malden VORTAC
(Lat. 36°33′18″N., long. 89°54′41″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Malden Municipal Airport and within 2.6 miles each side of the 121° radial of the Malden VORTAC extending from the 6.7-mile radius to 7 miles southeast of the VORTAC.

* * * * *

Issued in Kansas City, MO, on September 3, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–23723 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–34]

Amendment to Class E Airspace; Kansas City, MO

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This notice amends the Class E airspace area at Kansas City International Airport, MO. The Kansas City VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) has been relocated from its present position to the Kansas City International airport, MO. Relocating the Kansas City VORTAC requires amending the radial for the VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) or Tactical Air Navigation (TACAN) Runway (RWY) 27, Standard Instrument Approach Procedure (SIAP). Also, a review of the Class E airspace area for Kansas City International Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. This notice enlarges the Class E airspace to conform to the criteria of FAA Order 7400.2D. The review indicated the Instrument Landing System (ILS) localizer RWY 19R, ILS RWY 19L, ILS RWY 1L, ILS RWY 1R, and coordinates should be included in the text header for the Kansas City International Airport, MO. Minor corrections are also being made to the legal description of the Kansas City International Airport Class E airspace.

EFFECTIVE DATE: 0901 UTC November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On July 19, 1999, the FAA proposed to amend part 71 of the Federal Regulations (14 CFR part 71) by amending the Class E airspace area at Kansas City, MO (64 FR 38607). This action will provide additional controlled airspace to accommodate the VOR/DME or TACAN RWY 27 SIAP and comply with the criteria of FAA Order 7400.2D. Minor corrections are also being made to the text header and legal description of the Class E airspace. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) amends the Class E airspace area at Kansas city, MO, by providing additional controlled airspace for aircraft executing the VOR/DME or TACAN RWY 27 SIAP to the Kansas City International airport, and comply with the criteria of FAA Order 7400.2D. This action also corrects the legal description of the airspace. The area will be depicted on appropriate aeronautical charts.

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

Aviation, 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 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 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE MO E5 Kansas City International Airport, MO

Kansas City International Airport, MO
(Lat. 39°17′51″N., long. 94°42′50″W.)
Kansas City Downtown Airport, MO
(Lat. 39°07′24″N., long. 94°35′34″W.)
Fort Leavenworth, Sherman Army Airfield (AAF), KS
(Lat. 39°22′06″N., long. 94°54′53″W.)
Kansas City, VORTAC
(Lat. 39°17′07″N., long. 94°44′13″W.)
DOTTE LOM
(Lat. 39°13′15″N., long. 94°45′00″W.)
Riverside VOR/DME
(Lat. 39°07′14″N., long. 94°35′48″W.)
ILS RWY 19R localizer
(Lat. 39°17′24″N., long. 94°43′49″W.)
ILS RWY 19L localizer
(Lat. 39°16′44″N., long. 94°42′35″W.)
ILS RWY 1L localizer
(Lat. 39°19′30″N., long. 94°43′12″W.)
ILS RWY 1R localizer
(Lat. 39°18′34″N., long. 94°42′03″W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Kansas City International Airport and within 4.4 miles each side of the Kansas City International Runway 19R ILS localizer north course and within 4.4 miles east of the Kansas City International Runway 19L ILS localizer north course extending from the 7.6-mile radius to 21.7 miles north of the DOTTE LOM and within 4.4 miles each side of the 093° radial of the Kansas City VORTAC extending from the Kansas City International Airport 7.6-mile radius to 12 miles east of the Kansas City VORTAC, and within 2.5 miles west of the Kansas City International Runway 1L ILS localizer south course and within 2.6 miles each side of the Kansas City International Runway 1R ILS localizer course extending from the 7.6-mile radius to 9.5 miles south of the DOTTE LOM

and within a 6.7-mile radius of the Kansas City Downtown Airport and within 3 miles each side of the 210° radial of the Riverside VOR/DME extending from the 6.7-mile radius to 12.6 miles southwest of the Downtown Airport, and within a 6.5-mile radius of the Sherman AAF.

* * * * *

Issued in Kansas City, MO on September 3, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–23725 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29733; Amdt. No. 1948]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual *SIAP copies may be obtained from:*

1. FAA Public Inquiry Center (APA–200). FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 3, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF,SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . .Effective October 7, 1999

Storm Lake, IA, Storm Lake Muni, GPS RWY 35, Amdt 1
El Paso, TX, El Paso Intl, GPS RWY 4, Orig
El Paso, TX, El Paso Intl, GPS RWY 22, Orig
El Paso, TX, El Paso Intl, GPS RWY 26L, Orig

. . .Effective November 4, 1999

Kenai, AK, Kenai Muni, ILS RWY 19R, Orig
Kenai, AK, Kenai Muni, ILS/DME RWY 19R, Orig, CANCELLED
St. George, AK, St. George, GPS–B, Orig
Avon Park, FL, Avon Park Muni, GPS RWY 4, Orig
Avon Park, FL, Avon Park Muni, GPS RWY 9, Orig
Marco Island, FL, Marco Island, GPS RWY 35, Orig
Canton, GA, Cherokee County, GPS RWY 4, Amdt 1
Belvidere, IL, Belvidere LTD, VOR or GPS–A, Amdt 1, CANCELLED
Chicago/Aurora, IL, Aurora Muni, VOR or GPS RWY 2/36, Amdt 2
Poplar Grove, IL, Poplar Grove, VOR–A, Orig
Harlan, IA, Harlan Muni, NDB RWY 33, Amdt 5
Harlan, IA, Harlan Muni, GPS RWY 15, Orig
Harlan, IA, Harlan Muni, GPS RWY 33, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl (World-Chamberlain), ILS PRM RWY 12L, Amdt 3
Minneapolis, MN, Minneapolis-St. Paul Intl (World-Chamberlain), ILS RWY 12L, Amdt 5
Gulfport, MS, Gulfport-Biloxi Regional, GPS RWY 14, Orig
Gulfport, MS, Gulfport-Biloxi Regional, GPS RWY 18, Orig
Gulfport, MS, Gulfport-Biloxi Regional, GPS RWY 32, Orig
Gulfport, MS, Gulfport-Biloxi Regional, GPS RWY 36, Orig
Boonville, MO, Jesse Viertel Memorial, NDB RWY 18, Amdt 10
Boonville, MO, Jesse Viertel Memorial, GPS RWY 18, Orig
Boonville, MO, Jesse Viertel Memorial, GPS RWY 36, Orig
Joplin, MO, Joplin Regional, LOC BC RWY 31, Amdt 20
Joplin, MO, Joplin Regional, NDB RWY 13, Amdt 24
Joplin, MO, Joplin Regional, ILS RWY 13, Amdt 23
Joplin, MO, Joplin Regional, ILS/DME RWY 18, Amdt 1
Joplin, MO, Joplin Regional, GPS RWY 13, Orig
Joplin, MO, Joplin Regional, GPS RWY 18, Orig
Joplin, MO, Joplin Regional, GPS RWY 36, Orig
Hartington, NE, Hartington Muni, GPS RWY 13, Orig
Hartington, NE, Hartington Muni, GPS RWY 31, Orig
Thedford, NE, Thomas County, VOR RWY 11, Orig
Thedford, NE, Thomas County, GPS RWY 11, Orig
Thedford, NE, Thomas County, GPS RWY 29, Orig
Albany, NY, Albany Intl, VOR OR GPS RWY 28, Amdt 6, CANCELLED
Albany, NY, Albany Intl, VOR/DME OR GPS RWY 1, Amdt 10, CANCELLED
Albany, NY, Albany Intl, VOR/DME RWY 28, Orig
Albany, NY, Albany Intl, ILS RWY 1, Amdt 9
Albany, NY, Albany Intl, ILS RWY 19, Amdt 21
Albany, NY, Albany Intl, COPTER ILS RWY 1, Orig
Albany, NY, Albany Intl, GPS RWY 1, Orig
Albany, NY, Albany Intl, GPS RWY 10, Orig
Albany, NY, Albany Intl, GPS RWY 19, Orig
Albany, NY, Albany Intl, GPS RWY 28, Orig
Bryan, OH, Williams County, NDB–A, Amdt 6
Bryan, OH, Williams County, GPS RWY 7, Orig
Bryan, OH, Williams County, GPS RWY 25, Orig
Pottstown, PA, Pottstown-Limerick, VOR/DME–A, Amdt 3
Pottstown, PA, Pottstown-Limerick, LOC RWY 28, Amdt 1
Pottstown, PA, Pottstown-Limerick, NDB RWY 28, Amdt 1
Pottstown, PA, Pottstown-Limerick, GPS RWY 28, Orig
Mayaguez, PR, Eugenio Maria De Hostos, VOR OR GPS RWY 9, Amdt 9
Arlington, TN, Arlington Muni, LOC RWY 15, Amdt 2, CANCELLED
Arlington, TN, Arlington Muni, NDB OR GPS RWY 15, Amdt 8A, CANCELLED
Arlington, TN, Arlington Muni, NDB OR GPS RWY 33, Amdt 8, CANCELLED
Memphis, TN, Memphis Intl, Radar-1, Amdt 38
Nashville, TN, John C. Tune, GPS RWY 19, Orig
Richmond/Ashland, VA, Hanover County Muni, GPS RWY 16, Amdt 1
South Hill, VA, Meckleburg-Brunswick Regional, GPS RWY 19, Orig
Omak, WA, Omak, GPS RWY 35, Orig

[FR Doc. 99–23803 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29709; Amdt. No. 1947]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs

Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on August 20, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103.40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *EFFECTIVE UPON PUBLICATION*

FDC date	State	City	Airport	FDC No.	SIAP
06/07/99	CO.	STEAMBOAT SPRINGS	BOB ADAMS FIELD	9/3928	VOR/DME–C, AMDT 1A ...
07/06/99	DE.	MIDDLETON	SUMMIT	9/4695	VOR OR GPS–B, AMDT 1A ...
07/06/99	DE.	WILMINGTON	NEW CASTLE COUNTY	9/4697	VOR OR GPS RWY 1 AMDT 3A ...
07/06/99	DE.	WILMINGTON	NEW CASTLE COUNTY	9/4698	VOR RWY 27 AMDT 3A ...
07/06/99	DE.	WILMINGTON	NEW CASTLE COUNTY	9/4699	GPS RWY 9 ORIG ...
07/07/99	VA.	FREDERICKSBURG	SHANNON	9/4728	VOR RWY 24 AMDT 7 ...
07/07/99	VA.	LYNCHBURG	LYNCHBURG REGIONAL/PRESTON GLENN FIELD.	9/4727	VOR OR GPS RWY 3 AMDT 11A ...
07/07/99	VA.	MELFA	ACCOMACK COUNTY	9/4729	VOR/DME OR GPS RWY 3 ORIG ...
07/07/99	VA.	MELFA	ACCOMACK COUNTY	9/4730	NDB RWY 3 AMDT 8 ...
07/07/99	VA.	WAKEFIELD	WAKEFIELD MUNI	9/4731	NDB OR GPS RWY 20 AMDT 4A ...
07/13/99	VA.	HOT SPRINGS	INGALLS FIELD	9/4918	ILS RWY 24 AMDT 2B ...

FDC date	State	City	Airport	FDC No.	SIAP
08/03/99	WA.	ELLENSBURG	BOWERS FIELD	9/5610	VOR OR GPS–A, AMDT 2A ...
08/04/99	KY.	LONDON	LONDON-CORBIN ARPT-MAGEE FLD.	9/5644	VOR RWY 5, AMDT 12B ...
08/04/99	KY.	LONDON	LONDON-CORBIN ARPT-MAGEE FLD.	9/5645	GPS RWY 23, ORIG ...
08/04/99	KY.	LONDON	LONDON-CORBIN ARPT-MAGEE FLD.	9/5646	GPS RWY 5, ORIG ...
08/05/99	GA.	DUBLIN	W.H. ''BUD'' BARROW	9/5681	NDB RWY 2, AMDT 2 ...
08/05/99	GA.	DUBLIN	W.H. ''BUD'' BARROW	9/5682	ILS RWY 2, ORIG ...
08/05/99	KY.	LONDON	LONDON-CORBIN ARPT-MAGEE FLD.	9/5674	VOR/DME RNAV RWY 5, AMDT 3A ...
08/05/99	NM.	ALBUQUERQUE	DOUBLE EAGLE II	9/5680	ILS RWY 22, AMDT 2 ...
08/05/99	SC.	LAURENS	LAURENS COUNTY	9/5661	NDB RWY 8, AMDT 1A ...
08/09/99	IL.	PONTIAC	PONTIAC MUNICIPAL	9/5813	VOR RWY 24, AMDT 1 ...
08/09/99	VA.	RICHMOND	RICHMOND INTL	9/5815	VOR OR GPS RWY 25 AMDT 15 ...
08/09/99	WV.	BLUEFIELD	MERCER COUNTY	9/5810	ILS RWY 23 AMDT 14C ...
08/11/99	OH.	RAVENNA	PORTAGE COUNTY	9/5864	VOR/DME RNAV OR GPS RWY 27, AMDT 2 ...
08/12/99	KS.	PITTSBURG	ATKINSON MUNI	9/5902	NDB OR GPS RWY 16, AMDT 3A ...
08/13/99	MO.	ST. JOSEPH	ROSECRANS MEMORIAL	9/5932	NDB OR GPS RWY 35, AMDT 28B ...
08/13/99	MO.	ST JOSEPH	ROSECRANS MEMORIAL	9/5933	NDB RWY 17, AMDT 8 ...
08/13/99	MO.	ST JOSEPH	ROSECRANS MEMORIAL	9/5934	VOR/DME RNAV OR GPS RWY 17, AMDT 4 ...
08/13/99	OK.	OKMULGEE	OKMULGEE MUNI	9/5930	NDB RWY 17, AMDT 3 ...
08/13/99	OK.	OKMULGEE	OKMULGEE MUNI	9/5931	ILS RWY 17, ORIG ...
08/13/99	VA.	LYNCHBURG	LYNCHBURG REGIONAL/PRESTON GLENN FIELD.	9/5937	VOR OR GPS RWY 3 AMDT 11B ...
08/16/99	FL.	FORT MYERS	PAGE FIELD	9/5994	GPS RWY 23, ORIG ...
08/17/99	WY.	EVANSTON	EVANSTON-UINTA COUNTY BURNS FIELD.	9/6003	VOR/DME OR GPS–A ORIG ...
08/17/99	WY.	EVANSTON	EVANSTON-UINTA COUNTY BURNS FIELD.	9/6004	VOR/DME OR GPS RWY 23, AMDT 2 ...

[FR Doc. 99–23802 Filed 9–10–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 745

[Docket No. 990416098–9237–02]

RIN 0694–AB67

Chemical Weapons Conventions; Revisions to the Export Administration Regulations; States Parties; Licensing Policy Clarification

AGENCY: Bureau of Export Administration, Commerce

ACTION: Interim rule.

SUMMARY: On May 18, 1999, the Bureau of Export Administration published an interim rule (64 FR 27138) implementing the export control and reporting provisions of the Chemical Weapons Convention. This rule adds Estonia, Holy See, Micronesia, Nigeria and Sudan to the list of States Parties to the Convention, and makes clarifications in the licensing policy for exports and reexports of Schedule 2 and Schedule 3 chemicals. Finally, this rule also adds the addresses of the authorized agencies in Taiwan responsible for issuing End-Use Certificates, and removes the previously listed office.

DATES: This rule is effective September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe or Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION: On May 18, 1999, the Bureau of Export Administration published an interim rule (64 FR 27138) implementing the export control and certain reporting provisions of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction (Convention or CWC). This rule amends Supplement No. 2 to Part 745 of the Export Administration Regulations (EAR) to add Estonia, Holy See, Micronesia, Nigeria and Sudan to the list of States Parties to the Convention. This rule also clarifies that for CWC States Parties status only, Hong Kong is treated like the People's Republic of China. This does not change the export licensing policy for Hong Kong.

This rule also amends § 742.18(b) of the EAR to clarify the licensing policy for exports and reexports of Schedule 2 and Schedule 3 chemicals to non-States Parties. Specifically, § 742.18(b) is amended by removing the presumption of approval language with regard to exports and reexports of Schedule 2 and Schedule 3 chemicals to CWC States Parties as well as non-States Parties. This language is being removed because no license is required for exports and reexports of Schedule 2 and Schedule 3 chemicals to States Parties for the Chemical Weapons (''CW'') reason for control. Further, no license is required for exports of Schedule 2 chemicals to non-States Parties prior to April 29, 2000, for the CW reason for control unless the exporter is not able to obtain an End-Use Certificate prior to the export. Finally, no license is required for exports of Schedule 3 chemicals to non-States Parties for the CW reason for control unless the exporter is not able to obtain an End-Use Certificate prior to the export. Applications for exports of Schedule 2 and Schedule 3 chemicals to non-States Parties when no End-Use Certificate is obtained will generally be

denied. Note that the revisions to § 742.18(b) do not change current licensing policy.

Finally, this rule also amends Supplement No. 3 to Part 745 to add the addresses of the authorized agencies in Taiwan responsible for issuing End-Use Certificates and remove the Taiwan office previously listed. Three offices in Taiwan have the responsibility for issuing End-Use Certificates. Two of the three offices (Export Processing Zone Administration and the Science-Based Industrial Park Administration) are in special economic zones and are responsible for the activity in their respective zones only.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 13, 1998 (63 FR 55121, August 17, 1998).

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0088 and 0694–0117.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

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

List of Subjects

15 CFR Parts 742

Exports, Foreign trade.

15 CFR Part 745

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

Accordingly, parts 742 and 745 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. The authority citation for 15 CFR part 745 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 742—AMENDED

3. Section 742.18 is amended by removing paragraph (b)(2)(i), redesignating paragraphs (b)(2)(ii) and (iii) as (b)(2)(i) and (ii), and revising newly redesignated paragraph (b)(2)(i)(A) to read as follows:

§ 742.18 Chemical Weapons Convention (CWC or Convention).

* * * * *

(b) * * *

(1) * * *

(2) *Schedule 2 and Schedule 3 chemicals.* (i)(A) *ECCN 1C350.* Applications to export Schedule 2 chemicals prior to April 29, 2000, and Schedule 3 chemicals controlled under ECCN 1C350 to CWC non-States parties will generally be denied.

* * * * *

PART 745—AMENDED

4. Section 745.2 is amended by revising the third and fourth sentences in paragraph (a)(1), to read as follows:

§ 745.2 End—Use Certificate reporting requirements under the Chemical Weapons Convention.

* * * * *

(a)(1) * * * Supplement No. 3 to this part includes foreign authorized agencies responsible for issuing End-Use Certificates pursuant to this section. Additional foreign authorized agencies responsible for issuing End-Use Certificates will be included in Supplement No. 3 to this part when known. * * *

* * * * *

5. Supplement No. 2 to part 745 is revised to read as follows:

Supplement No. 2 to Part 745—States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction

List of States Parties as of September 13, 1999

Albania
Algeria
Argentina
Armenia
Australia
Austria
Bahrain
Bangladesh
Belarus
Belgium
Benin
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Chile
China*
Cook Islands
Costa Rica
Cote d'Ivoire (Ivory Coast)
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Ecuador
El Salvador
Equatorial Guinea
Estonia
Ethiopia
Fiji
Finland
France
Gambia
Georgia
Germany
Ghana
Greece
Guinea
Guyana

* For CWC purposes only, China includes Hong Kong.

Holy See
Hungary
Iceland
India
Indonesia
Iran
Ireland
Italy
Japan
Jordan
Kenya
Korea (Republic of)
Kuwait
Laos (P.D.R.)
Latvia
Lesotho
Lithuania
Luxembourg
Macedonia
Malawi
Maldives
Mali
Malta
Mauritius
Mauritania
Mexico
Micronesia
Moldova (Republic of)
Monaco
Mongolia
Morocco
Namibia
Nepal
Netherlands
New Zealand
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Saint Lucia
Saudi Arabia
Senegal
Seychelles
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Tajikistan
Tanzania
Togo
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
United Kingdom
Ukraine
United States
Uruguay
Uzbekistan
Venezuela
Vietnam
Zimbabwe

6. Supplement No. 3 to part 745 is amended by revising the title to the supplement, and the entry for Taiwan, to read as follows:

Supplement No. 3 to Part 745—Foreign Authorized Agencies Responsible for Issuing End-Use Certificates Pursuant to § 745.2

* * * * *

Taiwan [1]

Board of Foreign Trade, Ministry of Economic Affairs, 1 Hukou St., Taipei, Tel: (02) 2351–0271, Fax: (02) 2351–3603

Export Processing Zone Administration, Ministry of Economic Affairs, 600 Chiachang Rd., Nantze, Kaohsiung, Tel: (07) 361–1212, Fax: (07) 361–4348

Science-Based Industrial Park Administration, National Science Council, Executive Yuan, 2 Hsin-an Rd., Hsinchu, Tel: (03) 577–3311, Fax: (03) 577–6222

Dated: September 1, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–23309 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 990827238–9238–01]

RIN 0694–AB94

Reexports to Libya of Foreign Registered Aircraft Subject to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by reinstating provisions of License Exception AVS for temporary reexports to Libya of foreign registered aircraft subject to the EAR. This limited action is taken in response to suspended United Nations sanctions.

DATES: This rule is effective April 5, 1999.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1999, the United Nations Security Council (UNSC) suspended the sanctions against Libya set forth in UNSC resolutions 748 and 883. In light of this suspension, the United States has taken action that will allow, under License Exception AVS, the temporary reexport to Libya of foreign registered aircraft subject to the EAR. Foreign registered aircraft meeting all the temporary sojourn requirements of License Exception AVS may fly from foreign countries to Libya without obtaining prior written authorization from BXA. This action is limited in scope and in no way impacts other U.S. sanctions against Libya. Note that License Exception AVS remains unavailable for U.S. registered aircraft.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101).

Rule Making Requirements

1. This final rule has been determined to be non-significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This regulation does not involve any paperwork collections.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law

[1] Two of the three offices (Export Processing Zone Administration and the Science-Based Industrial Park Administration) are in special economic zones and are responsible for the activity in their respective zones.

requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rule making and opportunities for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects in 15 CFR Parts 746

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

Accordingly, Part 746 of the Export Administration Regulations (15 CFR Parts 730–774) is amended to read as follows:

1. The authority citation for 15 CFR Part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p.917; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13121 of April 30, 1999, 64 FR 24021 (May 5, 1999); Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 746—[AMENDED]

2. Section 746.4 is amended by revising paragraph (b)(2)(ii)(G) to read as follows:

§ 746.4 Libya

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Aircraft and vessels (AVS) for vessels only (see § 740.15 (c)(1) of the EAR), and temporary reexports of foreign registered aircraft (see § 740.15 (a)(4) of the EAR).

* * * * *

Dated: September 7, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–23785 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to correct position titles for delegates in the Center for Drug Evaluation and Research (CDER). This action is necessary to ensure the continued accuracy of the regulations.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT:
Leanne Cusumano, Center for Drug Evaluation and Research (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041, or
Donna G. Page, Division of Management Programs (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is correcting its regulations in subpart B of part 5 (21 CFR part 5) in two sections that reflect incorrect position titles for delegates within CDER. In the **Federal Register** of January 17, 1997 (62 FR 2554), FDA amended the regulations for delegations of authority to update titles of CDER delegates and organizational components to reflect organizational restructuring. In two instances, the position titles for the Director and Deputy Director, Office of Generic Drugs (OGD), Office of Pharmaceutical Science (OPS), CDER were inadvertently changed to reflect the Director and Deputy Director, Division of Bioequivalence, OGD, OPS, CDER. Previously, the Director and Deputy Director, OGD, OPS, CDER held those authorities. The Director and Deputy Division Director of Bioequivalence titles should be removed.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

§ 5.22 [Amended]

2. Section 5.22 *Certification of true copies and use of Departmental seal* is amended by removing paragraph (a) (13) (viii).

3. Section 5.31 is amended by revising paragraph (f) (3) to read as follows:

§ 5.31 Petitions under part 10.

(f) * * *

(3) The Director and Deputy Director, Office of Generic Drugs, Office of Pharmaceutical Science, CDER, except for those drug products listed in § 314.440(b) of this chapter, are authorized to issue responses to citizen petitions submitted under § 10.30 of this chapter seeking a determination of the suitability of an abbreviated new drug application for a drug product.

* * * * *

4. Section 5.93 is amended by revising paragraph (b) to read as follows:

§ 5.93 Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.

* * * * *

(b) The Director and Deputy Director, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

* * * * *

Dated: September 7, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–23683 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Nicarbazin and Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst Roussel Vet. The NADA provides for combining approved single ingredient nicarbazin and bambermycins Type A medicated articles to make Type C medicated broiler chicken feeds to be used as an aid in preventing outbreaks of cecal and intestinal forms of coccidiosis, and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: September 13, 1999

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059, filed NADA 140–339 that provides for combining approved single ingredient Nicarb® (nicarbazin) and Flavomycin® (bambermycins) Type A medicated articles to make Type C medicated broiler chicken feeds containing 113.5 grams per ton (g/t) nicarbazin and 1 to 2 g/t bambermycins. The Type C medicated broiler chicken feeds are used as an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency in broiler chickens. The NADA is approved as of August 6, 1999, and the regulations are amended in § 558.95 (21 CFR 558.95) by adding paragraph (d)(5)(iv), and in 21 CFR 558.366 in the table in paragraph (c) by adding an entry, to reflect the approval. Also, the introductory text of § 558.95(d)(5) is revised to better reflect the combination approvals.

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

This approval is for use of single ingredient Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, nicarbazin, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make Type C medicated feed from a Category II drug. Under section 512(m) of the act (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Public Law 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of Type A medicated articles to make Type C medicated feeds as provided in NADA 140–339 is limited to manufacture in a licensed feed mill.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.95 is amended by revising the introductory text of paragraph (d)(5) and by adding paragraph (d)(5)(iv) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(5) Bambermycins may be used in chickens as in paragraph (d)(1) of this section in combination with:

* * * * *

(iv) Nicarbazin as in § 558.366.

3. Section 558.366 is amended in the table in paragraph (c) under the entry for ''113.5 (0.0125 pct)'' by alphabetically adding an item for ''Bambermycins 1 to 2'' and revising the item for ''Lincomycin 2'' to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(c) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
* *	*	*	*	* *
113.5 (0.0125 pct)		* * *	* * *	* * *
* *	*	*	*	* *
	Bambermycins 1 to 2	Broiler chickens; aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis, for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for coccidiosis; do not use in flushing mashes; do not feed to laying hens; withdraw 4 days before slaughter. Nicarbazin as provided by 063271.	012799

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
	Lincomycin 2 (0.00044 pct)	Broiler chickens; aid in preventing outbreaks of secal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix*, and *E. brunetti*) coccidiosis; for increased rate of weight gain.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for coccidiosis; do not use in flushing mashes; do not feed to laying hens; withdraw 4 days before slaughter.	060728 063271
* *	*	*	*	* *

Dated: August 30, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–23665 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–417; Ref. Notice No. 871]

RIN: 1512–AB80

Extension for Johannisberg Riesling; Additional Grape Varieties (98R–406P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury Decision, final rule.

SUMMARY: This final rule amends the wine labeling regulations to allow use of the term ''Johannisberg Riesling'' on American wine labels for an additional seven years. The effect of this amendment allows American wineries additional time to educate consumers regarding the name change and allow for transitional time regarding the labeling, packaging and merchandising of Johannisberg Reisling. Additionally, ATF is adding two new names, Traminette and Aglianico, to the list of prime grape variety names for use in designating American varietal wines.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Teri Byers, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8195, or alcohol/tobacco@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

Law and Regulations

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product. Regulations which implement the provisions of section 105(e) as they relate to wine are set forth in title 27, Code of Federal Regulations, part 4.

The regulations at § 4.23(b) provide that a grape variety name may be used as the type designation of a grape wine if not less than 75 percent of the wine is derived from grapes of that variety. The wine must be labeled with an appellation of origin. Under § 4.23(d), a bottler may use two or more grape variety names as the type designation of a grape wine if all the wine is made from grapes of the labeled varieties, and the percentage of the wine derived from each grape variety is shown on the label.

T.D. ATF–370

In 1996, ATF issued a final rule containing a list of approved prime grape variety names which may be used as the designation for American wines. The purpose of creating a list of prime grape variety names was to help standardize wine label terminology and prevent consumer confusion by reducing the large number of synonyms for grape varieties that were previously used for labeling American wines.

The rule contained two other lists of alternative names that could be used as grape wine designations until January 1, 1997, or January 1, 1999. Finally, the rule also contained a procedure by which interested persons could petition the Director for the addition of names to the list of prime grape names.

Johannisberg Riesling

In T.D. ATF–370, ATF announced that the name ''Johannisberg Riesling'' should no longer be permitted as a grape variety designation on American wines. The true name for this grape variety is simply ''Riesling.'' However, in the United States, wineries had long used the terms ''Johannisberg Riesling'' and ''White Riesling'' to distinguish the true Riesling grape from other grapes that were incorrectly designated as ''Riesling.''

The final rule listed ''Riesling'' as the prime name for this grape. The term ''White Riesling'' was listed as a synonym for ''Riesling.'' This term is used internationally as a designation for this wine, and is also the botanical name for this grape.

The final rule placed the name ''Johannisberg Riesling'' as an alternative name that could be used only to label American wines bottled prior to January 1, 1999. ATF noted that ''Johannisberg Riesling'' is not the correct name for this grape variety. Furthermore, ''Johannisberg'' is a German geographic term, and the name of a specific winegrowing region within Germany. Since the final rule authorized use of the name Riesling, standing by itself, as the prime name for wine made from this grape, ATF determined that there was no longer the necessity to distinguish wine made from the true Riesling grape by use of the term ''Johannisberg Riesling.'' Owing to the necessity to prepare new packaging and marketing materials, its use was authorized for wines bottled prior to January 1, 1999.

Petition

ATF subsequently received a petition from the law firm of Buchman & O'Brien, filed on behalf of trade

associations representing United States wineries. The petition asked ATF to extend the phase-out period for the term Johannisberg Riesling for an additional seven years to January 1, 2006.

The petition provided several reasons for extending the phase-out date. Despite the fact that ATF made it clear in the notices issued prior to T.D. ATF–370 that there was significant controversy surrounding the term Johannisberg Riesling, the petition alleged that ATF failed to provide the industry with notice that it was phasing out the term. The petitioner also cited the 10 year phase-out period in the recently published Treasury decision relating to Gamay Beaujolais as support for extending the period. The petition asserted that because the Johannisberg Riesling designation had been in documented commercial use for over 100 years, an additional seven years would provide enough transitional time to educate the consuming public regarding the designation change. Finally, the petition states that the abrupt elimination of Johannisberg Riesling would cause material economic harm and hardship to the United States wine industry.

The petitioners also submitted a letter from the Deutsches Weininstitut GmbH in support of the extension. Letters were also submitted from several wineries, including Stimson Lane Vineyards & Estates (''Stimson Lane'') setting forth the reasons for an extension. Stimson Lane noted that in the 1960s and 1970s, ''many inferior riesling products were being produced in the United States. * * * To overcome the stigma that had become associated with these various rieslings, we and other producers focused our attention and brand investments on the term Johannisberg Riesling to refer to a medium-dry, highly complex wine.''

Stimson Lane argued that it would take several years to educate American consumers that the term ''Riesling'', standing alone, now designates the same wine previously known as ''Johannisburg Riesling.'' In fact, Stimson Lane suggested that the mere prospect was so ''overwhelming and complex that the industry has not even begun to agree how they are going to accomplish this.'' They noted that the term ''Johannisberg Riesling'' had been used for more than 100 years, and has sales of 36,000,000 bottles per year. Accordingly, an additional seven years would provide a more reasonable phase-out period.

The petition also included a letter from ELGIN, a marketing communications company, which provided marketing information illustrating the negative impact on wineries and consumers should ATF restrict the Johannisberg Riesling phase-out period to three years. ELGIN drew a comparison between Johannisberg Riesling and the 1982 Nissan Corporation's decision to change the Datsun brand name to Nissan. ELGIN asserted that this change in brand name was implemented in the United States over a six-year period; however, Nissan still saw its share drop in the first two years from 5.9 percent to 4.5 percent due to the name change.

Notice No. 871

In response to the petition, ATF issued Notice No. 871 on January 6, 1999 (64 FR 813). In the notice, ATF proposed extending the phase-out period for an additional seven years. We sought comments on the addition of four grape variety names to the list of prime names.

ATF also issued a rule that temporarily extended the effective date for phasing out the use of ''Johannisberg Riesling'' on American wine labels. *See* T.D. ATF–405 (64 FR 753). The date was deferred until September 30, 1999, so that ATF would have time to evaluate the comments received in response to the notice of proposed rulemaking. ATF stated that the proposed extension of the phase-out period did not signify any change in ATF's position regarding the eventual removal of ''Johannisberg Riesling'' from the list of prime names.

Comments Received in Response to Notice No. 871

ATF received nine comments in response to Notice No. 871. Six comments were in favor of allowing the continued use of the designation ''Johannisberg Riesling'' on American wine labels for an additional seven years. One comment flatly opposed any extension, while another comment suggested that a two-year extension would be more appropriate. The ninth comment addressed semigeneric designations.

Comments in Favor of the Proposed Extension

Comments in favor of the proposed extension were received from the President's Forum of the Beverage Alcohol Industry, Sand Castle Winery, Stimson Lane Vineyards and Estates, the California Association of Winegrape Growers (CAWG), the Washington Wine Institute and the Washington Wine Commission, and Buchman & O'Brien.

Several commenters stated that an insufficient phase-out period would have a significant economic impact on many growers and vintners. For example, the comment from CAWG stated that the proposed extension was consistent with actions taken by ATF with respect to other labeling terms, such as Gamay Beaujolais, and that ''[g]iven the huge investment made by growers and vintners in developing markets for our products, we believe the transition time provided by this proposal is appropriate and fair.''

A comment on behalf of the Washington Wine Institute and Washington Wine Commission noted the ''serious economic consequences'' to Washington growers and vintners that would result from a shorter phase-out period. The comment stated that ''Because 95% of all Riesling wine has been sold in the U.S. as Johannisberg Riesling, we need every minute of the proposed extension period to educate our consumers in the hope that we can minimize ultimate damages to the Riesling category.''

Other wineries also commented that it would take several years to do the type of consumer education necessary to avoid major defections from their brands. Stimson Lane reiterated in its comment the serious economic consequences that would be associated with having to ''jettison this name without the necessary transition period requested in our petition.'' A comment from Sand Castle Winery reiterated the need to educate the public on the new terminology.

The President's Forum of the Beverage Alcohol Industry reiterated its prior support of the extension, and stated that extension would be in the best interests of consumers and the U.S. wine industry.

JBC International submitted a comment on behalf of CAWG and the Wine Institute. In this comment, it was noted that Wine Institute supported the extension of the phase-out of the term ''Johannisberg Riesling.'' However, the comment stressed that the industry's position with respect to the term ''Johannisberg Riesling,'' which is not a semigeneric designation, ''does not indicate any future positions the U.S. industry might take with regard to the use of semi-generic terms.''

Comments in Opposition to Proposed Extension

ATF received two comments in opposition to the proposed seven year extension. The National Association of Beverage Importers, Inc. (NABI) suggested that a two year extension would be more appropriate. Coudert Brothers, on behalf of the Deutscher Weinfonds, opposed any extension of the phase-out period.

NABI suggested that further use of the term ''Johannisberg Riesling'' would be misleading to consumers, since Johannisberg is a place of origin, and the wine does not come from Johannisberg. While they supported a ''reasonable'' phase-out period for U.S. winemakers, NABI suggested that a 10 year phase-out (the original three years provided by the final rule, plus the proposed seven year extension) was too long.

The NABI comment also supported ATF's original determination in 1996 to set a 3 year phase-out period, and the adequacy of ATF's notice to the wine industry on this issue. Finally, the NABI comment pointed out that German Riesling wines are not labeled as ''Johannisberg Riesling'' unless the wines were made from grapes grown in the geographic region of Johannisberg.

Coudert Brothers submitted a comment on behalf of the Deutscher Weinfonds (''DW''), a quasigovernmental authority in the Federal Republic of Germany. The comment opposed the proposed extension as unnecessary. Coudert Brothers reiterated that ''Johannisberg Riesling'' is not a correct varietal name, and that the term ''Johannisberg'' is instead a geographic term referencing a district in the Rheingau region of Germany where grapes have been grown for more than a thousand years.

The comment from Coudert Brothers supported the adequacy of ATF's notice on this issue, and suggested that since ''Johannisberg Riesling'' is not a brand name, the petitioners' analogies to the length of time needed to build consumer recognition of a new brand name were not appropriate.

Finally, the comment from Coudert Brothers noted that the petition had attached a letter in support of the proposed extension from Deutches Weininstitut GmbH. Coudert Brothers asserted that Deutches Wineinstitut is an affiliate of DW, and that after a full review of the facts and history, Deutches Weininstitut had reconsidered its statements in that letter and adopted the position of DW.

Conclusion

After carefully considering the comments on this issue, ATF has decided to extend the phase-out period for an additional seven years. Accordingly, the term may be used on labels of American wines bottled prior to January 1, 2006. We believe that this period of time will allow wineries sufficient time to educate consumers regarding the name change, and to make necessary changes in the labeling, packaging, and merchandising of ''Riesling'' and ''White Riesling'' wines.

ATF's statutory mandate under the FAA Act is to regulate the use of terms on wine labels so as to ensure that consumers are not misled, but instead are adequately informed as to the identity of the wine. We stand behind the reasons set forth in T.D. ATF–370 for discontinuing the use of ''Johannisberg Riesling'' as a prime name for a grape variety. It is not the correct name for the variety, and there are two better names (''Riesling'' and ''White Riesling'') that are recognized throughout the world, and which do not contain the geographic reference ''Johannisberg.''

Nonetheless, the vintners and grape growers affected by this decision have made a persuasive case that American consumers still associate the name ''Johannisberg Riesling'' with the true Riesling grape in the United States. American consumers may not associate the term ''Riesling,'' standing by itself, with the wine that has been labeled for so many years as ''Johannisberg Riesling.''

It is reasonable to allow the industry an additional seven years to educate consumers as to the true meaning of the ''Riesling'' and ''White Riesling'' varietal designations. By the end of this period, American consumers will have sufficient information about the product so that they will be able to make an educated choice once the labeling terminology changes.

Two commenters suggested that ATF should not further perpetuate the use of a misleading geographic term as a varietal name. While ATF agrees that the name ''Johannisberg Riesling'' should be phased out, it does not agree that its continued use for another seven years will mislead consumers. It should be noted that wines labeled with a varietal designation must also bear an appellation of origin. *See* 27 CFR § 4.23(a). Thus, the labels for ''Johannisberg Riesling'' wines will clearly indicate the true geographic origin of the wines. Accordingly, we do not believe that this limited extension of the phase-out period will result in consumer confusion.

Traminette and Aglianico

In Notice No. 871, ATF proposed to add the names ''Traminette'' and ''Aglianico'' to the list of approved prime names in § 4.91. As discussed in further detail in the notice, ATF was provided with sufficient evidence to satisfy the requirements under § 4.93. No comments were received regarding these varietal names. Accordingly, ATF is amending § 4.91 to include ''Traminette'' and ''Aglianico'' in the list of approved prime names for grape varieties.

Vernaccia and Counoise

In Notice No. 871, ATF also sought additional comments regarding the inclusion of ''Vernaccia'' and ''Counoise'' as prime names in § 4.91. No comments were received on either of these names.

Millbrook Winery petitioned ATF for approval of ''Vernaccia'' as a prime name. Millbrook's petition stated that they obtained Vernaccia cuttings from the foundation Plants Materials Service at the University of California at Davis several years ago, and have cultivated this grape in their vineyards.

As we stated in Notice No. 871, the available literature indicates that the name ''Vernaccia'' is associated with several unrelated Italian grape varieties, including Vernacci di Oristano, Vernacci di San Giminiano, Vernaccia di Serrapetrona, and Vernaccia Trentina. These varieties include both green and black grapes, and are used in making distinctively different red, white, and sparkling wines.

It was unclear from the petition which ''Vernaccia'' grape was actually contained in the FPMS collection and grown in U.S. vineyards. Accordingly, ATF sought information on this issue in the notice of proposed rulemaking. However, no comments were submitted. In the absence of a positive identification as to which ''Vernaccia'' grape is being grown in the United States, the requirements of § 4.93 have not been met with respect to this name. Accordingly, ATF is not adding ''Vernaccia'' to the list of prime names in section 4.91.

Eberle Winery in Paso Robles, California, petitioned ATF to list ''Counoise'' in § 4.91. Although this is a well-documented red variety from the Rhone region of France, ATF had insufficient information to determine whether ''Counoise'' is suitable for wine production in the United States, or the extent to which ''Counoise'' may be grown domestically.

Accordingly, ATF solicited information on the domestic cultivation of the ''Counoise'' grape. No comments on this issue were received. Since the requirements of § 4.93 have not been met regarding this grape name, we are not amending § 4.91 to add the name ''Counoise.''

Trousseau vs. Bastardo

Section 4.91 currently lists Trousseau as a prime grape name while § 4.92 lists Bastardo as an alternative name for this grape variety which cannot be used for designating American wine bottled after

January 1, 1997. Trousseau is a French name for the grape, while Bastardo is the Portuguese name. ATF was asked to reexamine whether the name Bastardo should be authorized as a synonym for Trousseau, or whether Bastardo should replace Trousseau as the prime grape name at § 4.91.

ATF received no comments on this issue. Accordingly, ATF sees no reason to overturn the decision made in T.D. ATF–370. Trousseau will remain the prime name for this grape.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entitles. This regulation will extend the phase-out period for the use of the term Johannisberg Riesling and it will permit the use of other grape varietal names. The regulation will not impose any recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required because this final rule does not (1) have significant secondary or incidental effects on a substantial number of small entities; or (2) I impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on substantial entities.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is Ms. Teri Byers, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel within ATF and the Treasury Department participated in developing this document.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

PART 4—AMENDED

Paragraph 1. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.91 is amended by adding the names ''Aglianico'' and ''Traminette,'' in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approval prime names.

* * * * *

Aglianico

* * * * *

Traminette

* * * * *

Par. 3. Section 4.92 is amended by removing the name ''Johannisberg Riesling'' from paragraph (b) and by adding a new paragraph (c), to read as follows:

§ 4.92 Alternative names permitted for temporary use.

(c) *Wines bottled prior to January 1, 2006.*

Alternative Name	Prime Name
Johannisberg Riesling	Riesling.

Signed: July 22, 1999.

John W. Magaw,

Director.

Approved: August 13, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 99–23784 Filed 9–10–99; 8:45 am]

BILLING CODE 4810–31–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2001

[Directive No. 1; Appendix A]

[RIN 3095–AA92]

Classified National Security Information

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule establishes a uniform referral standard that Federal agencies must use for multi-agency declassification issues. The new provision responds to a need for further guidance to Federal agencies in implementing section 3.7(b) of Executive Order 12958, Classified National Security Information. This rule provides standards and guidelines for identifying equities of other agencies and foreign governments contained in information requiring referral for review before declassification and subsequent public disclosure. It includes guidelines for referring, redacting, and properly marking information that is subject to the automatic declassification provisions of the Executive order.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO. Telephone: 202–219–5250.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the provisions of Sections 3.4 and 3.7 (b) of Executive Order 12958, published April 20, 1995 (60 Fed. Reg. 19825). Section 3.4 of E.O. 12958 requires that all classified national security information contained in records that (1) are more than 25 years old, and (2) have been determined to have permanent historical value under title 44, United States Code, will be automatically declassified whether or not the records have been reviewed. Subsequently, all classified information in such records will be automatically declassified no longer than 25 years from the date of its original classification, except for information properly exempted in accordance with the Order. Section 3.7(b) requires that, when an agency receives any request for documents in its custody that contain information that was originally classified by another agency, or comes across such documents in the process of automatic declassification or systematic review provisions of this Order, the agency must refer copies of any request and the pertinent documents to the originating agency for processing, and may, after consultation with the originating agency, inform any requester of the referral unless such an association is itself classified under this Order.

This amendment was developed and approved by more than 25 agencies that serve on the External Referral Working Group (ERWG) sponsored and endorsed by the Intelligence Community's Declassification Program Managers' Council. Forty-two agencies responded to ISOO's May 1998 call for comment on the amendment. Eight of them provided written comments or suggestions, all of which were considered and incorporated as appropriate by February 1999. The amendment is being

published as a new subsection to Part 2001, the Executive Order's implementing Directive No. 1, issued by the Director of Office of Management and Budget (OMB) on October 13, 1995, when ISOO was a component of OMB. With the enactment of the Treasury, Postal Service and General Government Appropriations Act for Fiscal Year 1996, ISOO became a component of the National Archives and Records Administration.

This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure. This rule is not a significant regulatory action for the purposes of Executive Order 12866. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on small entities because it applies only to Federal agencies.

List of Subjects in 32 CFR Part 2001

Archives and records, Authority delegations (Government agencies), Classified information, Executive orders, Freedom of Information, Information, Intelligence, National defense, National security information, Presidential documents, Reporting and recordkeeping requirements, Security information, Security measures.

For the reasons set forth in the preamble, NARA amends part 2001 of title 32, Code of Federal Regulations, as follows:

PART 2001—CLASSIFIED NATIONAL SECURITY INFORMATION

The authority citation for part 2001 continues to read:

Authority: Section 5.2(a) and (b), and section 5.4 E.O. 12958, 60 FR 19825, April 20, 1995.

2. Add § 2001.55 to subpart E to read:

§ 2001.55 Document referral.

(a) *Purpose.* Under E.O. 12958, agencies reviewing records for declassification must facilitate the review of equities of other agencies contained in their records. Because agencies have a variety of processes for review and referral, common language and standards are needed to ensure clear, concise communication and coordinated action among all agencies involved in the referral process. Common language and standards are needed for declassification, exemption from automatic declassification, and proper marking of information subject to the automatic declassification provision of the Order. Consistent declassification of information through standardized procedures should result in lower cost and greater process efficiency, review accuracy, and the protection of the equities of all executive branch agencies.

(b) *Applicability.* These standards are binding on all executive branch agencies that create or handle classified information and are applicable to records covered under Section 3.4 of the Order. With respect to records reviewed prior to the issuance of these standards, deviations are acceptable as long as prior practice does not completely obstruct record referral.

(c) *Responsibility.* The senior agency official is responsible for the agency's referral program. The senior agency official shall designate agency personnel to assist in carrying out this responsibility.

(d) *Definitions.* For the purpose of this section:

Declassified or Declassification means the authorized change in the status of information from classified information to unclassified information.

Exempted means a declassification technique that regards information at the full document level. Any exemptible portion of a document may result in exemption (failure) of the entire document. Documents that contain no exemptible information are passed and therefore declassified. Declassified documents may be subject to other FOIA exemptions other than the security classification exemption ((b)(1), and the requirements placed by legal authorities governing Presidential holdings.

Pass/fail (P/F) means a declassification technique that regards information at the full document level. Any exemptible portion of a document may result in exemption (failure) of the entire document. Documents that contain no exemptible information are passed and therefore declassified. Declassified documents may be subject to other FOIA exemptions other than the security exemption ((b)(1)), and the requirements placed by legal authorities governing Presidential holdings.

Record means the statutory definition as provided under title 44 U.S.C. 3301 and 44 U.S.C. 2111, 2111 note, and 2201.

Redaction means a sanitization technique that involves removal (editing out) of exempted information from a document.

Tab means a narrow paper sleeve placed around a document or group of documents in such a way that it would be readily visible

(e) *Approaches to declassification.* The exchange of information between agencies and the final disposition of documents are affected by differences in the approaches to declassification. Agencies conducting pass/fail reviews may refer documents to agencies that redact. Actions taken by the sender and the recipient may differ as noted below:

(1) When referral is from a pass/fail agency to a pass/fail agency, both agencies conduct pass/fail reviews and annotate the classification or declassification decisions on the tabs and/or documents in accordance with NARA guidelines. The receiving agency should also notify the referring agency that the review has been completed.

(2) When referral is from a pass/fail agency to a redaction agency, the redaction agency is only required to conduct pass/fail reviews of documents referred by a pass/fail agency. If the redaction agency wishes to redact the document, it must do so on a copy of the referred document, then file the redacted version with the original. The redaction agency should also notify the pass/fail referring agency that the review has been completed.

(3) Referrals from redaction agencies to pass/fail agencies will be in the form of document copies. In the course of review the pass/fail agency may either pass or fail the document or its equities. Failed documents will be reviewed and redacted when practicable.

(4) Referrals between redaction agencies may result in redaction of any exemptible equities.

(f) *Referral decisions.* When agencies review documents only to the point at which exemptible information is identified, they must take one of the following actions to protect any other unidentified equities that may be in the unreviewed portions of the document:

(1) Complete a review of the document to identify other agency equities and notify those agencies; or

(2) Exempt the document and assign a Date/Event for automatic declassification, before which time they must provide timely notification to any equity agencies. Agencies reviewing previously exempted documents may apply a different exemption and new Date/Event for automatic declassification based upon the content of previously unreviewed equities.

(g) *Unmarked or improperly marked documents.* Agencies that find other agency information in unmarked or improperly marked documents that have been maintained and protected as classified information must afford those documents appropriate protection and tab or refer the documents as described in paragraph (h) of this section.

Agencies must provide other pertinent information, if available, regarding additional copies or possible public disclosure.

(h) *Means of Referral.* The reviewing agency must communicate referrals to equity agencies. They may use either of the methods below:

(1) *Full text referral.* Agencies will make referrals on media and in a format mutually agreed to by the referring and receiving agencies. Each referral request will clearly identify the referring agency and may identify the sections or areas of the document containing the receiving agency's equities and the requested action.

(2) *Tab and notify.*

(i) Agencies will use NARA-approved tabs and will clearly indicate on them the agency or agencies having equity in the document(s) held within the tabs. Successive documents with identical equity(ies) may be grouped within a single tab. Documents with differing equities, or non-successive documents, must be tabbed individually. In general, document order may not be changed to facilitate tabbing. In cases where there are so many tabbed documents in a box that tabbing documents individually would seriously overfill the box, the reviewer may group documents under a single tab for each agency equity at the back of each file folder, or back of the box if there are no file folders.

(ii) Agency notification must include, at a minimum, the following information: the approximate volume of equity, the highest classification of documents, the exact location (to box level) of the documents so marked, and instructions related to access to the boxes containing the documents.

(iii) Agencies will acknowledge receipt of referral notifications. They should notify the agency that placed the tabs that the review is complete. Any additional equities noted in the review must be annotated on the tab and brought to the attention of the agency that tabbed the document so the tabbing agency can notify those newly identified agencies.

(i) [Reserved].

(j) *Reviewed document marking.* Consistency in marking is essential in the referral of significant numbers of documents under the Executive Order. Decisions made during review must be communicated clearly to all subsequent reviewers.

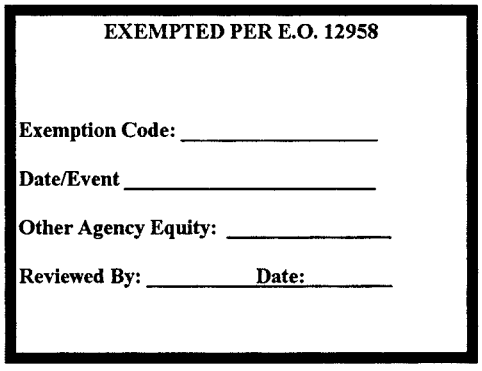
(1) Redactions must never be indicated on original documents, only on copies. Redaction agencies need a means of tracking the results of review (at the document level) by all reviewing agencies and a reason for each redaction.

(2) If only one exemption from declassification applies to all redacted portions of a document, the applicable exemption may be indicated on the front page of the redacted copy. If more than one exemption applies to a document, each redacted portion for which an exemption is asserted must be marked on the redacted copy.

(3) Redacted portions must be marked to indicate the agency and the number of the applicable exemption, for example, DIA25X1.

(4) Agencies reviewing a referred document must indicate on the tab, folder, or box the result of the review (i.e., exemption or declassification). The original document should be marked with the final action only by the agency responsible for the final declassification decision. Options include marking a copy of the document, marking the tab, notification as part of a transmittal, or marking the box or folder according to NARA guidelines. Automated agencies may forgo marking documents, provided the required information is maintained in an agency database and is accessible to other agencies. Exempt documents may be marked.

(i) *Sample Exempted Document Stamp.* Exempt documents may be stamped as shown in the following example:



(A) Normally, only one stamp should be placed on the document with any subsequent reviewing agencies adding their information to the stamp on the document, if possible. The stamp should not cover any writing on the document.

(B) Specific fields in the stamp must be completed as follows:

(*1*) *Exemption Code:* Agency(ies) ID and 25X plus exemption code(s).

(*2*) *Date/Event:* A specific date or event for declassification.

(*3*) *Other Agency Equity:* This line is used to track other agency equities and their review. The declassification authority enters ''NONE'' if no other agency equities are present, the identifiers of agencies with equity, or ''TBD'' (To be determined) if equities are unknown. Agency identifiers are crossed off as the reviews are completed and names may be added if additional equities are found.

(4) *Reviewed by:* Optional. If used, enter name or other personal identifier.

(5) *Date:* Enter date the action was taken.

(ii) Sample Stamp for Document Declassification. (A) When agencies mark declassified documents, the stamp must, at a minimum, include the information shown in the following example:

DECLASSIFIED
PER E.O. 12958

Agency: _____

By: _____ Date: _____

(B) Specific fields in the stamp must be completed as follows:

(*1*) *Agency:* Name of the agency.

(*2*) *By:* Name or personal identifier of the reviewer. (Optional)

(*3*) *Date:* Date the action was taken.

Dated: September 7, 1999

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–23800 Filed 9–10–99; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–156]

Drawbridge Operation Regulations: Gowanus Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Ninth Street Bridge, mile 1.4, across Gowanus Canal in New York City, New York. This deviation allows the bridge owner to require an eight hour advance notice for openings from 4 p.m. to 8 a.m., daily, from September 7, 1999, through November 5, 1999. This action is necessary to facilitate necessary repairs to the operating machinery at the bridge.

DATES: This deviation is effective from September 7, 1999, to November 5, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joeseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Ninth Street Bridge, at mile 1.4, across the Gowanus Canal in New York City, New York, has a vertical clearance of 5 feet at mean high water, and 9 feet at mean low water in the closed position. The bridge is required to open on signal at all times. The bridge owner, New York City Department of Transportation (NYCDOT), requested a deviation from the drawbridge operating regulations to facilitate repairs to the operating machinery at the bridge. This deviation from the operating regulations allows the Ninth Street Bridge to open on signal; except that, from 4 p.m. to 8 a.m., daily, from September 7, 1999, through November 5, 1999, the draw shall open if at least eight hours notice is given by calling the number posted at the bridge.

Thirty days notice to the Coast Guard for approval of this maintenance repair was not given by the bridge owner and was not required because this work involves vital, unscheduled maintenance that must be performed without undue delay. The Coast Guard has approved NYCDOT's request to because the work was determined to be necessary for public safety and the continued operation of the bridge.

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

Dated: September 2, 1999.

R.M. Larrabee,

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

[FR Doc. 99–23715 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–159]

Drawbridge Operation Regulations: Mystic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Amtrak Bridge, mile 2.4, across the Mystic River in Mystic, Connecticut. This deviation from the regulations allows the bridge owner to require a two hour advance notice for openings, Sunday through Thursday, 9:30 p.m. to 11:30 p.m., and 12:30 a.m. to 5 a.m., September 7, 1999, through September 27, 1999. This action is necessary to facilitate electrical modifications at the bridge.

DATES: This deviation is effective from September 7, 1999, through September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Amtrak Bridge, mile 2.4, across the Mystic River in Mystic, Connecticut, has a vertical clearance of 4 feet at mean high water, and 7 feet at mean low water in the closed position. The bridge owner, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the operating regulations to facilitate electrical modifications at the bridge.

The Coast Guard granted a deviation allowing AMTRAK to deviate from the normal operating regulations to facilitate necessary repairs for 39 days beginning on July 25, 1999, through September 2, 1999. The work did not begin on July 25 as scheduled. Work did not start until August 3, 1999. The bridge owner has requested a second deviation for 21 days to complete the work.

This deviation to the operating regulations allows the bridge owner to require a two hour advance notice for bridge openings for the Amtrak Bridge, mile 2.4, across the Mystic River in Mystic, Connecticut. This deviation will be in effect from Sunday through Thursday, 9:30 p.m. to 11:30 p.m., and 12:30 a.m. to 5 a.m., September 7, 1999, through September 27, 1999. Requests for bridge openings can be made by calling (860) 395–2355 or on marine radio channel 13 VHF/FM. Mariners requiring an emergency opening are advised to call Amtrak's Chief Dispatcher at (617) 345–7569. Vessels that can pass under the bridge without

an opening may do so at all times during the closed periods.

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

Dated: September 2, 1999.

R.M. LaRrabee,

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

[FR Doc. 99–23713 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–152]

RIN 2115–AA97

Safety Zone: Periphonics Corp. 30th Anniversary Fireworks, New York Harbor, Upper Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Periphonics Corp. 30th Anniversary Fireworks Display located in Federal Anchorage 20C, New York Harbor, Upper Bay. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Federal Anchorage 20C.

DATES: This rule is effective from 9 p.m. until 10:30 p.m., on Saturday, September 25, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On August 17, 1999, Fireworks by Grucci Inc. submitted an application to hold a fireworks program on the waters of Upper New York Bay in Federal Anchorage 20C. The fireworks program is being sponsored by Periphonics Corp. This regulation establishes a safety zone in all waters of Upper New York Bay within a 360 yard radius of the fireworks barge in approximate position 40°41′16.5″N 074°02′23″W (NAD 1983), approximately 360 yards east of Liberty Island, New York. The safety zone is in effect from 9 p.m. until 10:30 p.m. on Saturday, September 25, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of Federal Anchorage 20C and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorage 20C. Federal Anchorages 20A and 20B, to the north, and Federal Anchorages 20D and 20E, to the south, are also available for vessel use. Marine traffic will still be able to transit through Anchorage Channel, Upper Bay, during the event as the safety zone only extends 125 yards into the 925-yard wide channel. Public notifications will be made prior to the event via the Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may safely anchor to the north and south of the zone, that vessels may still transit through Anchorage Channel during the event, and extensive advance notifications which will be made.

Small Entities

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

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates.* A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final 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**.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. Add temporary § 165T.0–152 to read as follows:

§ 165.T01–152 Safety Zone: Periphonics Corp. 30th Anniversary Fireworks, New York Harbor, Upper Bay.

(a) *Location*. The following area is a safety zone: All waters of New York Harbor, Upper Bay within a 360-yard radius of the fireworks barge in approximate position 40°41′16.5″N 074°02′23″W (NAD 1983), approximately 360 yards east of Liberty Island, New York.

(b) *Effective period*. This section is effective from 9 p.m. until 10:30 p.m. on Saturday, September 25, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

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

Dated: September 3, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–23717 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–154]

RIN 2115–AA97

Safety Zone: City of Yonkers Fireworks, New York, Hudson River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the City of yonkers Fireworks Display located on the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: This rule is effective from 7:30 p.m. until 9 p.m., on Saturday, September 18, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

Bay Fireworks has submitted an application to hold a fireworks program on the waters of the Hudson River. The fireworks program is being sponsored by the City of Yonkers. This regulation establishes a safety zone in all waters of the Hudson River within a 360 yard radius of the fireworks barge in approximate position 40°56′14″ 073°54′28″W (NAD 1983), approximately 350 yards northwest of the Yonkers Municipal Pier. The safety zone is in effect from 7:30 p.m. until 9 p.m. on Saturday, September 18, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to transit to the west of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may safely transit to the west of the zone, and extensive advance notifications which will be made.

Small Entities

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

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates.* A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final 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.**

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. Add temporary § 165.T01–154 to read as follows:

§ 165.T01–154 Safety Zone: City of Yonkers Fireworks, New York Hudson River.

(a) *Location.* The following area is a safety zone: All waters of the Hudson River within a 360 yard radius of the fireworks barge located in approximate position 40°56′14″N 073°54′28″W (NAD 1983), approximately 350 yards northwest of the Yonkers Municipal Pier.

(b) *Effective period.* This section is effective from 7:30 p.m. until 9 p.m. on Saturday, September 18, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

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

Dated: September 3, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–23716 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska–99–012]

RIN 2115–AA97

Safety Zone; Gulf of Alaska, Southeast of Narrow Cape, Kodiak Island, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. The zone is needed to protect the safety of persons and vessels operating in the vicinity of the safety zone during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeen Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or his on scene representative. The safety zone will ensure the safety of human life and property during the rocket launch.

DATES: This temporary final rule is effective from 6 a.m. on September 11, 1999, until 10 p.m. on November 15, 1999.

ADDRESSES: The public docket for this rulemaking is maintained by Coast Guard Marine Safety Office Anchorage, 510 ''L'' Street, Suite 100, Anchorage, AK 99501. Materials in the public docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Byron Black, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 21, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Gulf of Alaska, southeast of Narrow Cape in the **Federal Register** (64 FR 39108). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Alaska Aerospace Development Corporation (AADC), in conjunction with the United States Air Force, will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska sometime between September 11, 1999, and November 15, 1999. The safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The launch time is scheduled to take place something between September 11, 1999, and November 15, 1999. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners. Because the hazardous condition is expected to last for approximately 4 hours of one day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

Discussion of Comments and Changes

No comments were received relating to the NPRM. Due to the latest information received from the Alaska

Aerospace Development Corporation, the launch window was moved forward four days from September 15, 1999, to a new start date of September 11, 1999. Based upon the trajectory information received after the NPRM was published, the size of the safety zone has been expanded to provide a greater safety buffer in the event that the launch is aborted shortly after take-off. The safety zone includes an area approximately 133 square nautical miles in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area by a line drawn from a point located at 57°30.5′ North, 152°23.5′ West, thence southeast to a point located at 57°22.0′ North, 151°52.5′ West, thence southwest to a point located at 57°15.0′ North, 152°00.0′ West, and thence northwest to a point located at 57°25.0′ North, 152°29.5′ West, and thence northeast to the point located at 57°30.5′ North, 152°23.5′ West. All coordinates reference Datum: NAD 1983.

This safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch of the Alaskan Aerospace rocket. The safety zone becomes effective at 6 a.m. on September 11, 1999, and terminates at 10 p.m. on November 15, 1999.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule would have significant economic impacts on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Because the hazardous condition is expected to last for approximately four hours of one day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. The Coast Guard believes there will be minimal impact to small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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 the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No comments or requests for assistance were received by the point of contact listed in the NPRM.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

1. The authority citation for Part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.401–1,6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T17–012 to read as follows:

§ 165.T17–012 Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island safety zones.

(a) *Description.* This safety zone includes an area approximately 133 square nautical miles in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area bounded by a line drawn from a point located at 57° 30.5′ North, 152° 23.5′ West, thence southeast to a point located at 57° 22.0′ North, 151° 52.5′ West, thence southwest to a point located at 57° 15.0′ West, and thence northwest to a point located at 57° 25.0′ North, 152° 29.5′ West, and thence northeast to the point located at 57° 30.5′ North, 152° 23.5′ West. All coordinates reference Datum: NAD 1983.

(b) *Effective dates:* This section is effective from 6 a.m. on September 11, 1999, to 10 p.m. on November 15, 1999.

(c) *Regulations.*

(1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700 or on VHF marine channel 16.

(2) Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in Title 33 Code of Federal Regulations, part 165.23 apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, or his on scene representative. The Captain of the Port, Western Alaska, or his on scene representative may be contacted onboard the U.S. Coast Guard cutter in the vicinity of Narrow Cape via VHF marine channel 16.

Dated: August 30, 1999.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 99–23714 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 190–9930a; TN 196–9931a; FRL–6433–4]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 17, 1997, and May 8, 1997, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted revisions to the Tennessee State Implementation Plan (SIP). The revisions pertain to Sulfur Dioxide Emission Regulations for the New Johnsonville and Copper Basin Additional Control Areas. EPA is granting final approval to these revisions.

DATES: This direct final rule is effective November 12, 1999 without further notice, unless EPA receives adverse comment by October 13, 1999. 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: Written comments should be provided to Scott Martin, Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. The telephone number is (404)–562–9036.

SUPPLEMENTARY INFORMATION:

On March 17, 1997, and May 8, 1997, the TDEC submitted revisions to the Tennessee SIP incorporating revisions to Chapter 1200–3–19 Emission Standards and Monitoring Requirements for Particulate and Sulfur Dioxide Nonattainment. A public hearing for these revisions was held on January 16, 1997, and the revisions became State effective on November 30, 1996, and April 16, 1997. The revisions are described below:

Chapter 1200–3–19–.19 Sulfur Dioxide Regulations for the Copper Basin Additional Control Area.

This rule is being revised to remove references to sources that have ceased operation and are being physically removed.

Chapter 1200–3–19–.14 Sulfur Dioxide Emission Regulations for the New Johnsonville Additional Control Area.

Paragraph (1)(b)2 is being amended by correcting a rule cite which reads 1200–3–14–.02(1)(e) to read 1200–3–14–02(1)(d). This corrects a typographical error.

Final Action

EPA is approving the aforementioned changes to the SIP because they are consistent with the Clean Air Act and EPA requirements.

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 November 12, 1999 without further notice unless the Agency receives adverse comments by October 13, 1999.

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 November 12, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. 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 E.O. 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 rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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).

H. 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 November 12, 1999. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 13, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

2. Section 52.2220(c) is amended by revising the following State citations for Chapter 1200–3–19 to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

EPA Approved Tennessee Regulations

* * * * *

CHAPTER 1200–3–19 EMISSION STANDARDS AND MONITORING REQUIREMENTS FOR PARTICULATE AND SULFUR DIOXIDE NONATTAINMENT AREAS

* * * * *

State citation	Title/subject	Adoption date	EPA approval date	Comments
*	* * * *	*		*
Section 1200–3–19–.14	Sulfur Dioxide Emission Regulations for the New Johnsonville Nonattainment Area.	04/16/97	9/13/99	

State citation	Title/subject	Adoption date	EPA approval date	Comments
* *	* * *	*	*	*
Section 1200–3–19–.19	Sulfur Dioxide Regulations for the Copper Basin Nonattainment Area.	11/30/96	9/13/99	
* *	* * *	*	*	*

[FR Doc. 99–23191 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192–0161; FRL–6434–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval to revisions to the California State Implementation Plan (SIP) which concern the recision of rules for the Mojave Desert Air Quality Management District (MDAQMD) and Tehama County Air Pollution Control District (TCAPCD). These rules concern emissions from orchard heaters and fuel burning equipment. The intended effect of this action is to bring the MDAQMD and TCAPCD SIPs up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This action is effective on October 13, 1999.

ADDRESSES: Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being finalized for recision from the MDAQMD portion of the California SIP are included in San Bernardino County Air Pollution Control District (SBCAPCD) Regulation VI, Orchard, Field or Citrus Grove Heaters, consisting of Rule 100, Definitions; Rule 101, Exceptions; Rule 102, Permits Required; Rule 103, Transfer; Rule 104, Standards for Granting Permits; Rule 109, Denial of Application; Rule 110, Appeals; Rule 120, Fees; Rule 130, Classification of Orchard Heaters; Rule 131, Class I Heaters Designated; Rule 132, Class II Heaters Designated; Rule 133, Identification of Heaters; Rule 134, Use of Incomplete Heaters Prohibited; Rule 135, Cleaning, Repairs; Rule 136, Authority to Classify Orchard Heaters; and Rule 137, Enforcement. These rules were previously submitted by the California Air Resources Board (CARB) to EPA on February 21, 1972 and approved on May 31, 1972 (37 FR 10856) for incorporation into the SIP. These rule recisions were adopted by the MDAQMD on June 24, 1996 and submitted by CARB to EPA on March 3, 1997.

The rule being finalized for recision from the TCAPCD portion of the California SIP is TCAPCD Rule 4.13, Fuel Burning Equipment. This rule was previously submitted by CARB to EPA on February 21, 1972 and approved on May 31, 1972 (37 FR 10856) for incorporation into the SIP. This rule recision was adopted by the TCAPCD on September 10, 1985 and submitted by CARB to EPA on February 10, 1986.

II. Background

On May 31, 1972, the EPA approved SBCAPCD Regulation VI, Rules 100–104, 109, 110, 120, and 130–137, Orchard, Field or Citrus Grove Heaters, for incorporation into the SIP. The SBCAPCD rescinded Regulation VI from its rulebook prior to 1977. The recision of SBCAPCD Regulation VI was disapproved by EPA on September 8, 1978 (43 FR 40018) as a SIP relaxation. On July 1, 1993, the SBCAPCD became the Mojave Desert Air Quality Management District (MDAQMD) by act of the California Legislature. In 1994, MDAQMD added portions of Riverside County, the Palo Verde Valley, and Blythe. The SBCAPCD rules remain in effect after July 1, 1993 until the MDAQMD rescinds or supersedes them. The rules being finalized for recision by MDAQMD were originally adopted by SBCAPCD for the purpose of controlling particulate matter PM–10 emissions from orchard heaters. In the spring of 1995, the MDAQMD conducted a survey of affected industry to determine if Class I and Class II orchard heaters were still in use. The survey determined that no known facility within the MDAQMD uses this antiquated technology. Wind machines are currently used to protect crops from frost. Therefore, the recision of SBCAPCD Regulation VI by MDAQMD does not relax the SIP control strategy.

On July 12, 1990, EPA approved TCAPCD Rule 4.9, Specific Contaminants, and Rule 4.14, Fuel Burning Equipment (Operational), for incorporation into the SIP. Rule 4.13, Fuel Burning Equipment, is submitted for recision, since Rules 4.9 and 4.14 provide regulation of the same pollutant emissions. Rule 4.9 regulates SO_X and combustion contaminant (particulate matter) emissions by limiting the respective concentrations in the gas, instead of by absolute quantities of emissions. Rule 4.14 regulates NO_X emissions by limiting the concentration in the gas, instead of by absolute quantity of emissions. SIP-approved Rules 4.9 and 4.14 strengthen the SIP relative to Rule 4.13, except for large fuel burning equipment with a capacity in excess of about 500 million British Thermal Units per hour. The TCAPCD

does not have larger capacity sources; therefore, the recision of TCAPCD rule 4.13 does not relax the SIP control strategy.

In response to section 110(a) and Part D of the Act, the State of California submitted many PM–10 rules for incorporation into the California SIP, including the rule recisions being acted on in this document. This document addresses EPA's final action to approve the recision of SBCAPCD Regulation VI, which includes Rules 100–104, 109, 110, 120, and 130–137, from the SIP. The recision was adopted June 24, 1996 by MDAQMD. This submittal was found to be complete on August 12, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[1]

This document also addresses EPA's final action to approve the recision of TCAPCD Rule 4.13 from the SIP. The recision was adopted by TCAPCD September 10, 1985. The following are EPA's response to public comments and evaluation and final action for these rules.

III. Response to Public Comments

EPA proposed this action and announced a 30-day public comment period on May 13, 1999 (64 FR 25822). On the same day, EPA published a direct final approval of the proposed action. EPA received one comment letter on the proposed rule from Eldon Heaston, MDAQMD. As a result, EPA withdrew the direct final approval on July 12, 1999 (64 FR 37406). The comment has been evaluated by EPA and a summary of the comment and EPA's response is set forth below.

Comment: Mr. Heaston commented that it is not clear that the EPA recision action deleted [San Bernardino County APCD] Regulation VI from the SIP and corrected the previous disapproval of the recision in 40 CFR 52.220(c)(39)(ii)(D) and 40 CFR 52.228(b)(1)(iv).

Response: EPA determined that the original submittal and approval dates of San Bernardino County APCD Regulation VI were incorrect in EPA records, therefore the incorporation by reference into the CFR was incorrect. This final action corrects the original submittal and approval dates, corrects the incorporation by reference to 40 CFR 52.220(b)(3)(ii), and deletes the previous disapproval in 40 CFR 52.220(c)(39)(ii)(D) and in 40 CFR 52.228(b)(1)(iv).

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

IV. EPA Evaluation and Final Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules strengthen the SIP or maintain the SIP's control strategy.

EPA has evaluated the submitted rule recisions and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the recision of SBCAPCD Regulation VI, Rules 100–104, 109, 110, 120, and 130–137 and TCAPCD Rule 4.13 are approved under section 110(k)3 of the CAA as meeting the requirements of section 110(a) and part D.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. 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 E.O. 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 rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any

rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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).

H. 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 November 12, 1999. 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).)

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

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

Dated: August 26, 1999.

David P. Howekamp,

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 removing paragraph (c)(39)(ii)(D) and by adding paragraphs (b)(3)(ii) and (b)(4) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *

(3) * * *

(ii) Previously approved on May 31, 1972 and now deleted without replacement Rule 4.13.

(4) San Bernardino County APCD.

(i) Previously approved on May 31, 1972 and now deleted without replacement Regulation VI, Rules 100 to 104, 109, 110, 120, and 130 to 137.

* * * * *

3. Section 52.228 is amended by removing paragraph (b)(1)(iv).

[FR Doc. 99–23588 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL193–1a; FRL–6435–6]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On July 9, 1999, the State of Illinois submitted a site-specific State Implementation Plan (SIP) revision revising Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) requirements for Sun Chemical Corporation (Sun) in Northlake, Illinois. The SIP revision exempts 17 resin storage tanks from bottom or submerged pipe fill requirements, subject to certain conditions. This rulemaking action approves, using the direct final process, the Illinois SIP revision request.

DATES: This rule is effective on November 12, 1999, unless EPA receives adverse written comments by October 13, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the revision request for this rulemaking action are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark

J. Palermo at (312) 886–6082 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

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I. Petitions for Judicial Review

I. What Is EPA Approving in This Rule?

We are approving, through the direct final process, a July 9, 1999, SIP revision request for the Sun facility in Northlake, Illinois. Sun is subject to VOC RACT requirements under section 182(b)(2) of the Clean Air Act (Act).[1] The SIP revision changes RACT as it applies to Sun by exempting 17 resin storage tanks from bottom or submerged pipe fill requirements, subject to certain conditions.

II. Who Is Affected by This SIP Revision?

This SIP revision only affects VOC control requirements at Sun's facility located in Northlake, Illinois. Sun's manufacturing operations consist primarily of batch processes involving the mixing or blending of resin, solvents, pigments, and varnishes to make finished inks and bases.

[1] It should be noted that under Illinois' regulations, the State uses the term ''Volatile Organic Material (VOM)'' rather than VOC, in referring to volatile organic emissions. The State's definition of VOM is equivalent to EPA's definition of VOC, and are interchan geable when discussing volatile organic emissions. For consistency with the Act and with EPA policy, we are using the term VOC in this rulemaking.

III. What Were Sun's Previous SIP Requirements?

Section 182(b)(2) of the Act requires States to adopt RACT rules covering ''major sources'' of VOC for all areas classified moderate nonattainment for ozone and above.[2] The Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, and Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County) is classified as ''severe'' nonattainment for ozone, and is subject to the Act's RACT requirement. Under section 182(d) of the Act, sources located in severe ozone nonattainment areas are considered ''major sources'' if they have the potential to emit 25 tons per year or more of VOC. Sun's Northlake facility has the potential to emit more than 25 tons of VOC per year, and, consequently, is subject to RACT requirements.

On September 9, 1994, we approved, as a revision to the Illinois SIP, several rules under 35 Ill. Adm. Code Parts 211 and 218 pertaining to VOC RACT for the Chicago severe ozone nonattainment area (59 FR 46562). The Illinois rules replaced the Chicago area Federal Implementation Plan (FIP), and the rules are generally patterned after the FIP's RACT requirements.

Included in part 218 is ''Subpart AA: Paint and Ink Manufacturing.'' Sun operates resin storage tanks which, with the adoption of subpart AA, became subject to the rule. Particularly, section 218.626(b), which is included under subpart AA, requires paint and ink manufacturers to equip their stationary Volatile Organic Liquid (VOL) storage containers with a submerged fill pipe or bottom fill pipe. Fill pipes are the conduits through which liquids enter the tanks. Containers with a capacity less than or equal to 946 liters (250 gallons) are exempt from the requirements. The intention behind the fill pipe requirement is to reduce VOC emissions from tanks by preventing splashing of volatile liquids as tanks are being filled.

IV. Why Is Sun Unable To Meet The Previous SIP Requirements?

Sun has 17 resin storage tanks which have been subject to subpart AA submerged or bottom fill pipe requirements, but still have overhead fill pipe systems. The tanks were installed in 1962, before emission control equipment on such tanks was contemplated. The tanks involved are in close proximity to each other, with some only a few feet apart, which Sun contends makes installing control equipment difficult and costly. Additionally, the substances stored in the tanks are thick and can not be pumped at normal temperatures. Because of this, Sun would have to install bottom fill rather than submerged fill pipes, since the raw materials would clog a submerged fill pipe and require frequent cleaning. Sun maintains that installing bottom fill pipes on these tanks would be more difficult and expensive than submerged pipe installation because they require fully cleaning out the tanks and cutting into the tanks.

The Illinois Environmental Protection Agency (IEPA) estimates that only 0.0203 tons per year of VOC is emitted from the 17 tanks at issue. The low VOC emissions is due to the fact that liquids stored in the tanks have a vapor pressure significantly less than 0.5 Pounds Per Square Inch Absolute (psia), and most of the materials stored in the tanks have vapor pressures less than 0.005 psia. Materials with a psia this low have low volatility, and hence are not subject to rapid vaporization and easy escape of vapors to the surrounding air.

The IEPA cost figures for installing bottom fill pipes on the 17 tanks is approximately $285,960 to $298,510. The IEPA estimates the cost per ton of VOC emissions reduced by complying with section 218.626(b) is $1,452,338.31 per ton of VOC reduced.

V. What Are the Changes to Sun's SIP Requirements?

On May 20, 1999, the Illinois Pollution Control Board (IPCB) adopted Adjusted Standard 99–4, which provides that section 218.626(b) shall not apply to the 17 storage tanks at Sun's Northlake, Illinois facility. These tanks are identified as tanks no. 26, 27, 35, 36, 37, 42, 43, 44, 47, 48, 49, 53, 54, 55, 59, 60, and 67 in Sun's petition for adjusted standard, and in the IEPA's January 29, 1999, response.

The adjusted standard will remain in effect so long as (a) no odor nuisance exists at the Sun's Northlake facility, and (b) the vapor pressures of materials stored in the 17 identified tanks remain less than 0.5 psia at 70 degrees Fahrenheit. Under the adjusted standard, Sun must keep all records necessary to establish that the vapor pressures of the materials stored in the 17 identified tanks are less than 0.5 psia at 70 degrees Fahrenheit. Each record

[2] A definition of RACT is cited in a General Preamble-Supplement published at 44 FR 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

shall be retained at the facility for a period of no less than 3 years.

This adjusted standard exempts Sun only from the requirements of section 218.626(b) for the 17 storage tanks listed in the adjusted standard, and not from any other requirements under part 218. Sun must continue to comply with all other applicable regulations of part 218, and any existing or new storage tanks not explicitly listed in the adjusted standard order are not exempted by the adjusted standard from section 218.626(b). Sun is subject to the test methods of part 218, including section 218.109 ''Vapor Pressure of Volatile Organic Liquids,'' which will ensure that the vapor pressure of VOL loaded into the 17 tanks are less than 0.5 psia at 70 degrees Fahrenheit. Section 218.109 was incorporated into the SIP on September 9, 1994 (59 FR 46562).

VI. What Is the Procedural History of This SIP Revision?

On October 22, 1998, Sun filed a petition for an adjusted standard with the IPCB. The IPCB held a public hearing on the adjusted standard on April 15, 1999, in Chicago, Illinois. On May 20, 1999, the IPCB adopted a Final Opinion and Order granting the adjusted standard. On July 9, 1999, IEPA submitted the adjusted standard as a SIP revision request to EPA. On July 28, 1999, we sent a letter to IEPA which deemed the SIP revision submittal administratively complete.

VII. What Is the Justification for Approving This SIP Revision?

IEPA indicates that Sun based its adjusted standard petition on section 218.122 of the Chicago area RACT rules. This section contains the State's general VOL storage tank loading requirements. This rule requires that stationary tanks with a storage capacity of greater than 946 liters (250 gallons) must be equipped with a permanent submerged load pipe or equivalent control device, unless no odor nuisance exists and the vapor pressure of the VOL loaded is less than or equal to 17.24 kilopascals (2.5 psia) at 294.3 degrees Kelvin (70 degrees Fahrenheit). Because of the high cost in installing bottom fill tanks on the 17 tanks, and the negligible emission benefit installing such pipes would achieve, IEPA believes that RACT for the storage tanks should be the level of control represented under the adjusted standard.

We agree that bottom fill or submerged fill pipe controls for the 17 tanks at the Sun facility are not technically and economically feasible. Further, we have issued no Control Techniques Guideline (CTG) justifying bottom fill or submerged fill pipe controls for Sun's tanks.[3] We are not aware of any paint or ink manufacturing facilities with storage tanks having similar design and holding similar materials as the tanks operated by Sun, which have replaced overhead fill pipes with bottom or submerged fill pipes in a manner that is less costly than what IEPA expects such replacement to cost Sun. Given that the vapor pressure limitation will prevent emissions to significantly increase from the current low emission levels, we find that the adjusted standard constitutes RACT for Sun's 17 tanks.

VIII. Final Rulemaking Action

In this rulemaking action, we are approving the July 9, 1999, Illinois SIP revision submittal of an adjusted standard for Sun's Northlake facility, which was granted by the IPCB on May 20, 1999. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by October 13, 1999. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 12, 1999.

IX. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. 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 E.O. 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 rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the

[3] CTGs are documents published by EPA which contain information on available air pollution control techniques and provide recommendations on what the EPA considers the ''presumptive norm'' for RACT.

regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this rulemaking action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. 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 November 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 30, 1999.

Robert Springer,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(153) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(153) On July 9, 1999, the State of Illinois submitted a site-specific State Implementation Plan (SIP) revision affecting Volatile Organic Material control requirements at Sun Chemical Corporation (Sun) in Northlake, Illinois. The SIP revision changes requirements for 17 resin storage tanks operated by Sun. Specifically, the SIP revision exempts the 17 tanks from the bottom or submerged fill pipe requirements, provided that no odor nuisance exists at the Sun Northlake facility, and that the vapor pressures of materials stored in the tanks remain less the 0.5 pounds per square inch absolute at 70 degrees Fahrenheit.

(i) Incorporation by reference.

May 20, 1999, Opinion and Order of the Illinois Pollution Control Board, AS 99–4, effective May 20, 1999.

[FR Doc. 99–23581 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–75–1–9910a; KY–97–1–9911a; FRL–6435–4]

Approval and Promulgation of Implementation Plans

Kentucky: Approval of Revisions to the Louisville State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Air Pollution Control District of Jefferson County portion of the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet on November 12, 1993, and amended on April 5, 1994, and June 30, 1997, which includes the 15 Percent Rate-of-Progress Plan (15 percent plan) for the Louisville moderate ozone nonattainment area. This submittal was made to meet the 15 percent reduction in emissions of volatile organic compounds (VOCs) requirement of section 182(b)(1)(A) of the Clean Air Act, as amended in 1990 (CAA). EPA is approving the plan, including the individual measures that achieve the 15 percent reduction in VOCs and the Jefferson County 1990 Base Year Emissions Inventory. The inventory was submitted by Kentucky to fulfill requirements of section 182(b) of the CAA.

DATES: This direct final rule is effective November 12, 1999 without further notice, unless EPA receives adverse comment by October 13, 1999. 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: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file KY–97.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, Division of Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. The telephone number is 404–562–9036.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

- Background.
- 1990 Base year emissions inventory.
- Adjusted base year inventory.
- 1990 Rate-of-progress inventory.
- 15 Percent plan.
- Creditable 15 percent reduction.
- Total expected reductions by 1996.
- Target level emissions for 1996.
- Reductions needed by 1996 to achieve 15 percent accounting for growth.
- Reductions required by 1996.
- 1996 Projected emissions.
- Control strategies to meet the 15 percent reduction requirement and approval of supporting regulations.
- Final action.
- Administrative requirements.

Background

The Louisville area was classified as a multi-state moderate ozone nonattainment area on November 15, 1990, pursuant to the CAA. The Louisville nonattainment area consists of Jefferson County and parts of Bullit and Oldham Counties, Kentucky, and Floyd and Clark Counties, Indiana.

Section 182(b) of the CAA requires that each state in which all or part of a moderate nonattainment area is located submit, by November 15, 1992, an inventory of actual emissions from all sources, as described in section 172(c)(3) and 182(a)(1), in accordance with guidance provided by the Administrator. This inventory is for calendar year 1990 and is designated the base year inventory. The inventory should include both anthropogenic and biogenic sources of volatile organic compounds (VOCs), nitrogen oxides (NOx), and carbon monoxide (CO), and must address actual emissions of these pollutants in the nonattainment area during the peak ozone season. The inventory should include all point and area sources, as well as all highway and non-highway mobile sources.

In addition, section 182(b)(1)(A) of the CAA requires ozone nonattainment areas classified as moderate and above to develop plans to reduce VOC emissions by 15 percent from the 1990 base year. The plans were to be submitted by November 15, 1993, and the reductions were required to be achieved within six years of enactment or November 15, 1996. The CAA also set limitations on the creditability of certain types of reductions. Specifically, a state cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures promulgated prior to 1990, or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990 or required under section 211(h) of the CAA, which restricts gasoline RVP. Furthermore, the CAA does not allow credit for corrections to vehicle I/M Programs or corrections to Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990.

1990 Base Year Emissions Inventory

In this action, the EPA is approving the 1990 base year emissions inventory for the Louisville area. Detailed information on the emissions calculations can be obtained at the Regional Office address above. The following table is a summary of the base year emissions inventory.

LOUISVILLE 1990 BASE YEAR EMISSIONS INVENTORY

[Tons/day]

Source type	VOC	NO_X	CO
Point	83.75	147.87	10.14
Area	38.69	4.5	28.04

LOUISVILLE 1990 BASE YEAR EMISSIONS INVENTORY—Continued

[Tons/day]

Source type	VOC	NO_x	CO
Mobile	92.81	40.49	541.22
Nonroad	12.68	16.58	54.61
Biogenic	20.9	N/A	N/A
Total	248.83	209.44	634.01

The EPA is approving this inventory as satisfying the requirements of section 182(a)(1) of the CAA.

Adjusted Base Year Inventory

The adjusted base year inventory for VOCs requires exclusion of emission reductions that would occur by 1996 as a result of the FMVCP and RVP regulations promulgated prior to 1990. The following table is a summary of the adjusted base year inventory.

LOUISVILLE 1990 ADJUSTED BASE YEAR INVENTORY

[Tons/day]

Source type	VOC
Point	83.75
Area	38.69
Mobile	49.52
Nonroad	12.68
Total	184.64

1990 Rate-of-Progress Inventory

The Rate-of-Progress inventory is comprised of the anthropogenic stationary (point and area) and total mobile source emissions in the nonattainment area with all biogenic emissions removed from the base year inventory. The following table is a summary of the Rate-of-Progress baseline inventory.

LOUISVILLE 1990 RATE-OF-PROGRESS BASE YEAR

[Tons/day]

Source type	VOC
Point	83.75
Area	38.69
Mobile	92.81

LOUISVILLE 1990 RATE-OF-PROGRESS BASE YEAR—Continued

[Tons/day]

Source type	VOC
Nonroad	12.68
Total	227.93

15 Percent Plan

Kentucky submitted a 15 percent Plan for the Louisville nonattainment area to EPA on November 12, 1993, with additional information submitted on April 5, 1994, and June 30, 1997. This submittal was required in order to demonstrate reasonable further progress in attaining the National Ambient Air Quality Standard (NAAQS) for ozone. This 15 percent plan is not intended to demonstrate attainment of the ozone NAAQS. The CAA required Kentucky to submit a plan by November 15, 1993, and to attain the ozone NAAQS by 1996. In order to demonstrate progress, the Commonwealth must achieve actual VOC emission reductions of at least 15 percent during the first six years after enactment of the CAA. The 15 percent reduction must be based on a decrease from the 1990 base year emissions, excluding emissions from other reduction programs and emission sources outside the nonattainment area.

Creditable 15 Percent Reduction

The adjusted base year inventory of 184.64 tons/day is multiplied by 0.15 to calculate the creditable 15 percent reduction in tons/day. Louisville needs a reduction of 27.70 tons/day to obtain the creditable 15 percent reduction.

Total Expected Reductions by 1996

The total expected reductions by 1996 include the required 15 percent (27.70 tons/day), the reductions from FMVCP and RVP (43.29 tons/day), corrections to RACT rules (0.00 tons/day) and corrections to I/M programs (0.00 tons/day). Louisville was required to have a total of 70.99 tons/day of VOC reductions by 1996.

Target Level Emissions for 1996

To calculate the 1996 target emissions level, the total expected reductions (70.99 tons/day) are subtracted from the 1990 Rate-of-Progress base year inventory (227.93 tons/day) for the Louisville nonattainment area. This gives a 1996 target level emissions of 156.94 tons/day.

Reductions Needed by 1996 to Achieve 15 Percent Accounting for Growth

The reductions needed to achieve 15 percent accounting for growth are determined by subtracting the target level emissions (156.94 tons/day) from the 1996 estimated emissions (199.57 tons/day) giving a total of 42.63 tons/day in additional reductions needed.

Reductions Required by 1996

In order to meet the target level required for 1996, Louisville must reduce VOC emissions by an additional 42.63 tons/day. The 1990 Rate-of-Progress Base Year inventory is the base inventory from which the 15 percent reduction on existing sources and the reduction from growth by 1996 must be calculated to meet requirements of the CAA.

The following is a summary of the reductions Louisville obtained to meet this requirement. More detailed information concerning specific areas of reduction can be found in the Technical Support Document (TSD) located at the Regional EPA address listed above.

SUMMARY OF VOC REDUCTIONS NEEDED

Jefferson county	Required	Expected	Outcome
Point Sources	16.37	16.78	0.41
Area Sources	8.98	7.53	−1.45
Mobile Sources	15.48	17.87	2.39
Subtotal	40.83	42.18	1.35
Bullit/Oldham Counties	1.79	1.20	−0.59

SUMMARY OF VOC REDUCTIONS NEEDED—Continued

Jefferson county	Required	Expected	Outcome
Total	42.62	43.38	(1)

[1] 0.76 tons/day excess reductions.

1996 Projected Emissions

The projected emissions for 1996 have been calculated by applying the control measures discussed below to the 1996 Estimated Emissions. The 1996 Projected Emissions are shown as follows:

1996 PROJECTED EMISSIONS

[Tons/day]

Point	70.85
Area	31.66
Mobile	39.51
Nonroad	14.17
Total	156.19

The 1996 Projected Emissions of 156.19 tons/day are less than the 1996 Target Level Emissions of 156.94 tons/day.

Control Strategies to Meet the 15 Percent Reduction Requirement and Approval of Supporting Regulations

Industrial Source Control Measures

Regulation 1.18 Rule Effectiveness

Regulation 1.18 Rule Effectiveness is being added and applies to sources subject to Regulation 6.43 VOC Emission Reduction Requirements. Sources must develop a rule effectiveness improvement plan and have all measures implemented by November 15, 1996. These improvements reduce VOC emissions by 12,740 lbs/day or 6.37 tons/day.

1990 Non-Compliance Sources

There were three industrial sources that were not in compliance with existing VOC emission requirements during 1990. The actual emissions of these sources were included in the 1990 emissions inventory. These sources subsequently implemented compliance plans and are now in compliance with these VOC emissions requirements. The reductions from the actual emissions levels down to the allowed emissions levels are included in the final 15 percent VOC emissions reduction plan for the industrial source categories. This results in a reduction of 2,696 lbs/day or 1.35 tons/day.

Regulation 6.43 VOC Emission Reduction Requirements

Regulation 6.43 VOC Emission Reduction Requirements establishes emissions, equipment, and operational requirements for 16 sources. Each source voluntarily agreed to the requirements. The sources are as follows: Akzo Nobel Resins; Alcan Rolled Products Company, Louisville Plant; American Synthetic Rubber Corporation; Ashland Petroleum Company, Aetna Terminal; the Carbide/Graphite Group, Inc.; Courtaulds Coatings, Plant #1; DuPont Dow Elastomers L.L.C.; the Earthgrains Company; Ford Motor Company; Gateway Press, Inc.; Marathon Oil Company, Louisville Terminal; Phillip Morris Incorporated, Maple Street Plant; Reynolds Metals Company, Plant #1; Rohm and Haas Kentucky Inc.; United Defense Louisville Plant; Zeon Chemicals KY, Inc. These requirements reduce VOC emissions by 7,127 lbs/day or 3.56 tons/day. Further details pertaining to the requirements specific to each source can be obtained from the Regional EPA address listed above.

Use of Emission Reduction Credits (ERCs)—Industry Held

The voluntary use of industry held ERCs is a component of Regulation 6.43 and will provide a reduction of 5,859 lbs/day or 2.93 tons/day in VOC emissions. These ERCs have been retired from Louisville's ERC Bank.

Regulation 2.12 Emissions Trading (Including Banking and Bubble Rules)

This regulation is being added to develop Louisville's emission trading and banking program. The regulation is applicable to any pollutant for which Louisville has adopted stationary source control regulations. The application procedures, creation of ERCs, the use of ERCs, the withdrawal of ERCs, and the air quality modeling requirements for use of particulate matter, sulfur dioxide, and carbon monoxide ERCs are all established in the regulation. EPA is not taking action on section 8 Alternate Emission Standards (Bubbles), section 9 Transmittals to EPA, and section 10 Amendments to the State Implementation Plan: Requirements and Exemptions. Approval of these sections is not required for the Louisville area to operate a banking and trading program and the sections do not meet EPA guidance.

Use of Unallocated Community-Held ERCs.

Regulation 2.12 Emissions Trading (Including Banking and Bubble Rules) is being added to the Louisville SIP to establish the procedural requirements for the use of unallocated community held ERCs. The ERCs used toward the 15 percent plan have been retired from the bank and will provide a reduction of 5,129 lbs/day or 2.56 tons/day in VOC emissions.

Area Source Control Measures

Regulation 1.16 Standards for Volatile Organic Compound Content of Architectural and Industrial Maintenance Coatings

This regulation is being added to require a 25 percent reduction in VOC content in coatings used for architectural and industrial maintenance. There are two emission categories relevant to this area: architectural surface coatings and traffic markings. The total projected 1996 emissions from these categories is 12,090 lbs/day. Multiplying this by 0.25 gives a reduction of 3,022 lbs/day or 1.51 tons/day.

Regulation 6.40 Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control)

This regulation is being added to the Louisville SIP and is applicable to gasoline dispensing facilities dispensing gasoline from storage tanks to motor vehicle fuel tanks. This regulation applies to both new and existing gasoline dispensing facilities whose monthly throughput exceeds 10,000 gallons of gasoline based upon calculating the average volume of gasoline dispensed per month over the consecutive 12 month period preceding the effective date of this regulation (August 9, 1993). Regulation 6.40 does not apply to a gasoline dispensing facility of an independent small business marketer which dispenses an average monthly throughput of less than 25,000 gallons of gasoline per month. The application of Stage II vapor recovery equipment on the gasoline

dispensing facilities in the County as specified in Regulation 6.40 is expected to result in a reduction of 95 percent in the relevant VOC emissions. Since the use of reformulated gasoline has been mandated for the area through the Commonwealth's opt-in to the program, an allowance was made for this reduction prior to calculating the Stage II reduction. The EPA estimate of 3.5% was used. The following provides the basis for the estimate of the emission reduction:

1996 Projected Emissions (no RFG)—11,299 lbs/day
3.5% Reduction for RFG——395 lbs/day
Net projected 1996 Emissions—10,904 lbs/day
10,904 lbs/day × 0.95 = 10,358 lbs/day or 5.18 tons/day reduction.

Regulation 6.44 Standards of Performance for Existing Commercial Motor Vehicle and Mobile Equipment Refinishing Operations and Regulation 7.79 Standards of Performance for New Commercial Motor Vehicle and Mobile Equipment Refinishing Operations

These regulations are being added to the Louisville SIP and are applicable to commercial facilities making spot repairs, panel repairs, refinishing of parts and/or the refinishing of the entire motor vehicle or mobile equipment. These regulations require auto refinishing shops to reduce VOC emissions by limiting solvent use, paints, equipment used or some combination of these options and result in 0.57 tons/day reduction in VOC emissions.

Regulation 6.45 Standards of Performance for Existing Solid Waste Landfills

This regulation is being added to the Louisville SIP and is applicable to existing solid waste landfills located in Jefferson County, Kentucky that commenced operation before or after February 2, 1994. This regulation involves the control of VOC emissions from landfill waste disposal sites implementing collection and combustion of landfill gases and will result in a 0.10 tons/day reduction in VOC emissions.

Gasoline Controls for Off-Road Mobile Sources

By adopting the use of reformulated gasoline for non-road engines Louisville will obtain a reduction of 0.17 tons/day.

Mobile Source Control Measures

Regulation 8.03 Commuter Vehicle Testing Requirements

This regulation is being added to the Jefferson County SIP and is applicable to the owners or operators of vehicles who routinely or regularly commute to Jefferson County, Kentucky for employment or self employment. The provisions of this regulation also apply to all employers and self-employers with one or more employees who routinely or regularly commute to Jefferson County for employment or self employment. Commuters shall have their vehicle's emissions tested on an annual basis at a Jefferson County Vehicle Emissions Testing Center and shall comply with Regulation 8.01 unless exempted. This regulation will result in a 4.98 tons/day reduction in VOC emissions.

Gasoline Controls

Implementation of reformulated gasoline for onroad mobile sources reduces VOC emissions by of 9.99 tons/day.

Other Control Measures

In an effort to gain additional reductions, Louisville is implementing the following programs: Transit (1.30 ton/day), Rideshare (1.10 tons/day), Alternate Fuel Vehicles (0.10 tons/day), and Traffic Signal Improvements (0.40 tons/day) for a total reduction in VOC emissions of 2.90 tons/day.

Final Action

The EPA is granting final approval of the Louisville 1990 Base Year Emissions Inventory and 15 percent plan because they are consistent with the CAA and EPA requirements. Final approval is also being granted to the regulations discussed in the previous section of this document.

Also included in this submittal were revisions to Regulation 1.02 Definitions; Regulation 1.04 Performance Tests; Regulation 1.06 Source Self Monitoring and Reporting; Regulation 1.07 Emissions During Shutdowns, Malfunctions, and Emergencies; Regulation 1.08 Administrative Procedures; Regulation 2.02 Air Pollution Regulation; Regulation 2.03 Permit Requirements—Non-Title V Operating Permits and Construction/Demolition Permits; Regulation 2.07 Public Notification; Regulation 2.08 Emission Fees, Permit Fees, and Permit Renewal Procedures; Regulation 5.14 Hazardous Air Pollutants; and Regulation 6.42 VOC and NOx RACT. Action on these regulations will be taken in a separate notice.

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law, Kentucky—''KRS 224.01–040'', or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

I. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not

required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. 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 E.O. 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 rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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).

H. 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 November 12, 1999. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 20, 1999.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. Section 52.939, is amended by adding paragraph (c)(94) to read as follows:

§ 52.939 Original identification of plan section.

* * * * *

(c) * * *

(94) Approval of the Louisville 15 percent plan and supporting regulations including the 1990 Base Year Emissions Inventory submitted by Kentucky on November 12, 1993, and amended on April 5, 1994, and June 30, 1997.

(i) Incorporation by reference.

Regulation 6.43 Volatile Organic Compound Emission Reduction Requirements, amended May 21, 1997.
Regulation 1.18 Rule Effectiveness, adopted September 21, 1994.
Regulation 2.12 Emissions Trading (Including Banking and Bubble Rules), sections 1–7, amended December 18, 1996.
Regulation 1.16 Standards for Volatile Organic Compound Content of Architectural and Industrial Maintenance Coatings, adopted February 2, 1994.
Regulation 6.40 Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control), amended August 9, 1993.
Regulation 6.44 Standards of Performance for Existing Commercial Motor Vehicles and Mobile Equipment Refinishing Operations, adopted February 2, 1994.
Regulation 7.79 Standards of Performance for New Commercial Motor Vehicle and Mobile Equipment Refinishing Operations, adopted February 2, 1994.
Regulation 6.45 Standards of Performance for Existing Solid Waste Landfills, adopted February 2, 1994.
Regulation 8.03 Commuter Vehicle Testing Requirements, amended September 15, 1993.

(ii) Other material. None.

* * * * *

[FR Doc. 99–23579 Filed 9–10–99; 8:45 am]
BILLING CODE 6560–50–P

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

45 CFR Chapter XXII

Removal of CFR chapter

Effective December 31, 1993, the Christopher Columbus Quincentenary Jubilee Commission was terminated by Public Law 98–375, 98 Stat. 1257; as amended by Public Law 100–94, 101 Stat. 700. Therefore, the **Office of the Federal Register** is removing CCQJC regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR part 8.

Accordingly, 45 CFR is amended by removing parts 2200 through 2299 and vacating Chapter XXII.

[FR Doc. 99–55529 Filed 9–10–99; 8:45 am]
BILLING CODE 1505–01–D

Proposed Rules

Federal Register

Vol. 64, No. 176

Monday, September 13, 1999

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–10]

State of Nevada; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated June 22, 1999, which was filed with the Commission by the State of Nevada. The petition was docketed by the NRC on July 13, 1999, and has been assigned Docket No. PRM–73–10. The petitioner requests that the NRC amend its regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism. The petitioner requests that the NRC conduct a comprehensive assessment of the consequences of terrorist attacks that have the capability of radiological sabotage, including attacks against transportation infrastructure used during nuclear waste shipments, attacks involving capture of nuclear waste shipments and use of high energy explosives against a cask or casks, and direct attacks upon a nuclear waste shipping cask or casks using antitank missiles or other military weapons.

DATES: Submit comments by November 29, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: cag@nrc.gov).

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7162 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner (the State of Nevada) is a corridor state for spent nuclear fuel (SNF) shipments, and has been a destination and origin state for SNF shipments to and from federal research facilities. Under current law, Nevada is the potential host state for a federal geologic repository and could become the ultimate destination for shipments of SNF and high-level radioactive waste (HLW). The petitioner has an interest in protecting the citizens of Nevada from risks associated with the transportation of SNF and HLW. The petitioner also has an interest as the entity responsible for immediate emergency response, in ensuring that transporters of SNF have adequately prepared for potential emergencies within the State of Nevada. The petitioner notes a particular concern for physical protection of SNF shipments under 10 CFR part 73.

Background

As part of this petition, the petitioner has included two separate reports—

(1) *Nuclear Waste Transportation Security and Safety Issues; The Risk of Terrorism and Sabotage Against Repository Shipments,* prepared by Robert J. Halstead, Transportation Consultant , Portage, Wisconsin, and James David Ballard, School of Criminal Justice, Grand Valley State University, Grand Rapids, Michigan, dated October 1997 (Attachment A); and

(2) *The Transportation of Spent Nuclear Fuel and High-Level Waste; A Systematic Basis for Planning and Management at National, Regional, and Community Levels,* prepared for the Nevada Nuclear Waste Project Office by the Planning Information Corporation, dated September 10, 1996 (Attachment B).

The petitioner's primary interest is the potential for many thousands of SNF and HLW shipments to Yucca Mountain and the Nevada Test Site. The Nuclear Waste Policy Amendments Act (NWPAA) of 1987 designated Yucca Mountain as the site to be characterized for a national geologic repository for SNF and HLW. The petitioner states that legislation pending in Congress would designate the Nevada Test Site as sole location for a centralized interim storage facility. The petitioner states that a study prepared for the Nevada Agency for Nuclear Projects, estimates that 20,200 shipments (13,900 by rail/6,300 by truck) will occur over about 30 years. The same study projected 56,600 to 104,500 shipments over 40 years, for a repository combined with an interim storage facility.

The petitioner believes that a national repository or interim storage facility may have a greater symbolic value to terrorists as a target for attack than at a reactor storage facility, and that the enhanced symbolic value of the facility as a target may extend to SNF shipments to a national repository or interim storage facility. The petitioner states that in a review of national storage and disposal policy options, the U.S. Nuclear Waste Technical Review Board (NWTRB) observed that compared to reactor sites ''a single facility with a large stockpile of spent fuel might be a more tempting and visible target.'' [1] The petitioner agrees with the NWTRB

[1] Report of the U.S. Nuclear Waste Technical Review Board entitled ''Disposal and Storage of Spent Nuclear Fuel—Finding the Right Balance; A Report to Congress and the Secretary of Energy,'' at 20 (March 1996).

conclusion that more analyses are needed to determine if ''either an at-reactor or centralized storage facility would be more exposed to theft or sabotage,'' and that these analyses should also consider SNF shipments to a centralized facility. The petitioner also believes that a storage or disposal facility operated by the U.S. Department of Energy (DOE), the U.S. government agency responsible for producing nuclear weapons, may have greater symbolic value to terrorists as a target for attack than commercial storage facilities, and that the enhanced symbolic value may extend to DOE's shipments of SNF and HLW to this type of facility.

The petitioner believes that the nature of the terrorist threat has changed significantly since the Commission last evaluated the adequacy of its SNF transportation safeguards regulations in 1984. The petitioner believes that a general strengthening of the regulations intended to safeguard SNF shipments is necessary because of what they identify as new developments in two critical areas:

(1) Changes in the nature of the terrorist threat; and

(2) Increased vulnerability of shipping casks to terrorist attacks involving high-energy explosive devices.

It is the petitioner's position that since 1984, three major changes have occurred in the nature of the terrorist threat that argue for a strengthening of the safeguards regulations:

(1) An increase in lethality of terrorist attacks in the United States;

(2) An increase in serious terrorist attacks and threats against transportation systems; and

(3) A renewal of concern about nuclear terrorism generally, and specifically terrorist actions involving potential radioactive contamination.

The petitioner believes that the willingness of terrorists to kill or injure large numbers of Americans, demonstrated in the World Trade Center and Oklahoma City bombings, compels a focus on incidents that are clearly intended to cause, or could cause, radiological sabotage.

The petitioner believes that developments in two related areas have increased the vulnerability of spent fuel shipping casks to terrorist attacks involving high-energy explosive devices since the NRC last evaluated the adequacy of its SNF transportation safeguards regulations. Their first premise is that the capabilities and availability of explosive devices, especially antitank weapons, have increased significantly. Their second is that new spent fuel shipping cask designs, developed to increase payloads without exceeding specified weight limits, appear to be more vulnerable to attacks involving past, current, and future weapons systems and commercial explosives. The petitioner believes that these developments argue for a strengthening of the safeguards regulations.

The petitioner believes that portable tank weapons have become more powerful, more reliable, and more available worldwide since the early 1980s. The petitioner believes that most, if not all, of the antitank missiles identified in Attachment A of the petition (Table 5), have warheads capable of completely perforating a truck cask and its spent fuel cargo, and most are capable of deeply penetrating or completing perforating a rail cask and damaging the spent fuel inside. The petitioner states that these weapons are designed to hit moving targets at a distance of 30 meters or more, eliminating the need to capture the cask, and facilitating selection of optimal attack times and locations. The petitioner believes that the portability of these weapons allows further flexibility in attack planning, including use of multiple warheads, and in escape planning.

The petitioner believes that the SNF shipping casks are vulnerable to attacks using military and commercial explosives, particularly conical shaped charges. The petitioner states that DOE-sponsored tests in the early 1980s demonstrated that an attack on a truck using a large military shaped charge could result in release of one percent of the SNF cargo, and that well-trained terrorists planning to capture, control and directly attack spent fuel shipping casks are likely to use shaped charges as their weapon of choice. The petitioner believes that the technology of shape charges and detonation systems, especially for applications in the construction and petroleum industries, and for specialized purposes such as military demining, have continued to evolve since the early 1980s. Numerous ''off the shelf'' military and commercial shape charges weighing around one kilogram are capable of penetrating 10 to 20 inches of steel.

The petitioner believes that new spent fuel shipping cask designs, developed to increase payloads without exceeding specified weight limits, appear vulnerable to attacks involving current and future military weapons systems and commercial explosives. The petitioner believes the casks used for shipments to a repository and/or interim storage facility shipments will have different design configurations, and will use different structural and shielding materials, compared to casks currently in use, and compared to the older casks that were assumed in the DOE and NRC sabotage consequence assessments in the early 1980s. The petitioner states that some of these differences may make them more vulnerable to attack with armor-piercing weapons or high-energy explosives.

The Petition

The petitioner requests that the NRC reexamine the issue of terrorism and sabotage against spent nuclear fuel and high-level radioactive waste shipments to determine the adequacy of the current physical protection regulations and to assist the DOE and the affected stakeholders in the preparation of a legally sufficient environmental impact statement as part of the NRC licensing process for a geologic repository or an interim storage facility.

The petitioner requests that the NRC conduct a comprehensive assessment of consequences of three types of attacks that have the potential for radiological sabotage—

(1) Attacks against transportation infrastructure used by nuclear waste shipments,

(2) Attacks involving capture of a nuclear waste shipment and use of high-energy explosives against the cask; and

(3) Direct attacks upon a nuclear shipping cask using antitank missiles or other military weapons.

The petitioner states that the consequence assessment for repository shipments should address the full range of impact of a terrorism/sabotage event resulting in a release of radioactive materials: immediate and long-term implications for public health; environmental impacts, broadly defined; standard socio-economic impacts, including cleanup and disposal costs and opportunity costs to affected individuals and businesses; and so-called special socio-economic impacts, including individual and collective psychological trauma, and economic losses resulting from public perceptions of risk and stigma effects.

The petitioner requests that the Commission reexamine the design basis threat used to design safeguards systems to protect shipments of SNF against acts of radiological sabotage. The current regulations under 10 CFR 73.1(a)(1)(i), require licensees to design safeguards systems to protect shipments against attacks involving several well-trained and dedicated individuals, hand-held automatic weapons, a four-wheel drive land vehicle, and hand-carried equipment, including incapacitating agents and explosives. The regulations

should also specify that the attackers may receive insider (employee) assistance and use a four-wheel drive land vehicle bomb.

The petitioner requests that the Commission clarify the meaning of ''hand-carried equipment'' within the current design basis threat. The petitioner requests that the NRC amend the design basis threat to include use of explosive devices and other weapons larger than those commonly considered to be hand-carried or hand-held, and the use of vehicles other than four-wheel drive civilian land vehicles. The petitioner states that well-trained and dedicated adversaries could conceivably obtain and use military attack vehicles or military aircraft armed with bombs, missiles, or other powerful weapons. The petitioner believes that the possibility of attacks involving stolen or otherwise diverted military weapons system should be given special consideration considering the number and nature of military installations in Nevada and along the transportation corridors to Nevada.

The petitioner requests that the NRC reexamine the definition of ''radiological sabotage'' in 10 CFR 73.2. Currently, NRC regulations define ''radiological sabotage'' as ''* * * any deliberate act directed against a plant or transport in which an activity licensed pursuant to the regulations in * * * (10 CFR part 73) is conducted, or against a component of such a plant or transport which could directly or indirectly endanger the public health and safety by exposure to radiation.''

The petitioner believes that the wording ''could directly or indirectly endanger'' implies a judgment by the NRC regarding the consequences of the action, as opposed to the intentions of the individuals carrying out the action. The petitioner states that actions against SNF shipments that are intended to cause a loss of shielding or a release of radioactive materials should be included in the definition of ''radiological sabotage,'' regardless of the success or failure of the action. The petitioner states that the definition should include deliberate actions that cause, or are intended to cause, economic damage or social disruption regardless of the extent to which public health and safety are actually endangered by exposure to radiation. The petitioner believes that an incident involving an intentional release of radioactive materials, especially in a heavily populated area, could cause widespread social disruption and substantial economic losses even if there were no immediate human casualties and few projected latent cancer fatalities. The petitioner believes that local fears and anxieties would be amplified by national and international media coverage. The petitioner believes that adverse economic impacts would include the cost of emergency response, evacuation, decontamination and disposal; opportunity costs to affected individuals, property-owners, and businesses; and economic losses resulting from public perceptions of risk and stigma effects.

The petitioner requests that the NRC reexamine its regulations requiring advance route approval requirements, in light of the expected increase in SNF shipments once a Federal repository or interim storage facility begins operations. The petitioner states that neither the current physical protection regulations, nor the U.S. Department of Transportation's routing regulations, require shippers and carriers to minimize shipments through highly populated areas. The petitioner states that since 1979, the NRC has approved many highway routes through heavily populated areas, including I–15 through Las Vegas, NV, and I–80 through Reno-Sparks, NV. The petitioner states that a transportation risk assessment recently published by the NRC assumes that tens of thousands of truck shipments to a repository at Yucca Mountain, NV, could travel through Las Vegas, NV, and other heavily populated areas of Clark County, Nevada.

The current regulations requiring advance route approval require licensees to provide for advance approval by the NRC of the routes used for road and rail shipments of spent fuel, and of any U.S. ports where vessels carrying spent fuel shipments are scheduled to stop [10 CFR 73.37(b)(7)].

The petitioner believes that the NRC should specifically require shippers and carriers to identify primary and alternate routes that minimize highway and rail shipments through heavily populated areas. The petitioner states that the NRC should adopt the route selection criteria in NUREG–0561[2] as part of the regulations, and specifically require shippers and carriers to minimize use of routes that fail to comply with the route selection criteria.

The petitioner requests that the NRC reexamine its regulations requiring armed escorts for SNF shipments by road. These current regulations state, in part:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(c) * * *

(1) A transport vehicle within a heavily populated area is:

(i) Occupied by at least two individuals, one of whom serves as escort, and escorted by an armed member of the local law enforcement agency in a mobile unit of such agency: or

(ii) Led by a separate vehicle occupied by at least one armed escort, and trailed by a third vehicle occupied by at least one armed escort.

(2) A transport vehicle not within any heavily populated area is:

(i) Occupied by at least one driver and one other individual who serves as escort; or

(ii) Occupied by a driver and escorted by a separate vehicle occupied by at least two escorts; or

(iii) Escorted as set forth in paragraph (c)(1) of this section.

* * * * *

The petitioner requests that the NRC amend its regulations to eliminate the differential armed escort requirements based on population. The petitioner contends that the current requirements for shipments within a heavily populated area should be uniformly applied to all road shipments. The petitioner believes that residents of small cities, towns, and rural areas along shipment routes are entitled to the same level of protection as residents of heavily populated areas. The petitioner states that there are many Nevada locations outside of designated, heavily populated areas with significant population concentrations within one-half mile of a potential SNF shipment route. The petitioner asserts that many difficult-to-evacuate facilities, such as schools, hospitals, industrial plants, shopping centers, hotels, and resorts, are located immediately adjacent to potential truck shipment routes in small cities and towns; several major water supplies and outdoor recreation facilities with high, seasonal population densities are located in close proximity to potential truck shipments routes in rural Nevada.

The petitioner also requests the NRC to increase the armed escort requirements for truck shipments. The petitioner believes that new, high-capacity, legal-weight truck SNF shipping cask designs may be particularly vulnerable to attacks involving high-energy explosive devices. At a minimum, the NRC should consider requiring at least one armed escort each in a lead vehicle and a chase vehicle, with one escort being a state or local law enforcement officer.

[2] Copies of NUREGS may be purchased from the Reproduction and Distribution Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

The petitioner requests that the NRC eliminate the differential armed escort requirements for rail shipments based on population. The current regulations state, in part:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(d) * * *

(1) A shipment car within a heavily populated area is accompanied by two armed escorts (who may be members of a local law enforcement agency), at least one of whom is stationed at a location on the train that will permit observation of the shipment car while in motion.

(2) A shipment car not within any heavily populated area is accompanied by at least one escort stationed at a location on the train that will permit observation of the shipment car while in motion.

* * * * *

The petitioner states that in Nevada and other western states, many small cities and towns grew up around rail lines and rail service facilities. In these communities, there are significant population concentrations within one-half mile of a potential SNF rail shipment route. In Nevada and other western states, mainline railroads are frequently located in river valleys near major water supplies. The petitioner also states that mainline railroads of national economic significance may, in-and-of themselves, be as attractive as targets for terrorists as heavily populated areas. The Union Pacific Salt Lake City-Los Angeles mainline through southern Nevada, potentially the primary shipment route to Yucca Mountain, is a rail route of national economic significance.

The petitioner requests that the NRC, as part of re-examining its physical protection requirements, consider increasing substantially the armed escort requirements for rail shipments. The petitioner believes that new high-capacity (125 ton) rail shipping cask designs may be particularly vulnerable to attacks involving antitank missiles, and that armed escorts aboard the train could be incapacitated at the beginning of an attack, or as a result of a train derailment. The petitioner requests that the NRC consider requiring at least two armed escorts in an escort vehicle, in addition to the two armed escorts aboard the train.

Based on recent experience during the foreign research reactor SNF shipments through Nevada, the petitioner believes the NRC should also consider requiring continuous, real-time aircraft surveillance along certain rail route segments through rough terrain and through heavily populated areas. The NRC should evaluate the advantages and disadvantages of requiring a level of protection comparable to that provided for rail shipments of strategic special nuclear materials (SNM); seven armed escorts stationed in a variety of configurations aboard the train or in one or more escort vehicles.

The petitioner requests that the NRC adopt additional planning and scheduling requirements for the physical protection of SNF shipments based on the precautions already applied to shipments of SNM. The current regulations for shipments of SNM state, in part:

§ 73.26 Transportation physical protection systems, subsystems, components, and procedures.

(b) * * *

(1) Shipments shall be scheduled to avoid regular patterns and preplanned to avoid areas of natural disaster or civil disorders, such as strikes or riots. Such shipments shall be planned in order to avoid storage times in excess of 24 hours and to assure that deliveries occur at a time when the receiver at the final delivery point is present to accept the shipment.

* * * * *

The petitioner requests that the NRC amend the general requirements for physical protection of irradiated reactor fuel in transit by adopting the same planning and scheduling requirements for special nuclear material in transit.

The petitioner requests that the NRC require all rail shipments of SNF to be made in dedicated trains. Considering the potentially large number of cross-country rail shipments to a repository and/or storage facility, more than 12,000 rail cask shipments of SNF and more than 1,000 rail cask shipments of HLW, the petitioner believes that the performance objectives set forth in § 73.37(a)(1) can only be met by requiring all rail shipments to be made in dedicated trains. The petitioner also requests that the NRC consider the physical protection implications of shipping SNF in dedicated trains compared to general rail freight service. While continuing to believe that the use of dedicated trains should be mandatory, the petitioner acknowledges arguments that dedicated trains pose certain disadvantages from a physical protection standpoint. The petitioner states that dedicated trains may facilitate target tracking and attack scheduling by potential adversaries, and multiple casks in a short train may facilitate target selection and weapon delivery. According to the petitioner, the NRC's consequence assessment should evaluate the advantages and disadvantages of shipping SNF in dedicated trains, assuming both current and enhanced requirements or rail shipment armed escorts.

The Petitioner's Conclusions

The petitioner submits that the foregoing regulatory amendments and the need for a comprehensive assessment are necessitated by changes in the nature of the terrorist threat and increased vulnerability of shipping casks to terrorist attacks involving high-energy explosive devices, as set forth in the petition. In the interest of safeguarding the public health, safety, and welfare, the petitioner urges the Commission to undertake the tasks outlined in the petition.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 7th day of September, 1999.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–23691 Filed 9–10–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE154; Notice No. 23–99–01–SC]

Special Conditions: Cessna Aircraft Company, Model 525A, High Altitude Operation.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Company Model 525A airplane. This airplane will have novel or unusual design features associated with high altitude operation. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before October 13, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE154, 601 East 12th Street, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address.

Comments must be marked: CE154. 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: Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 601 East 12th Street, Kansas City, Missouri, 816–426–5688, fax 816–426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE154.'' The postcard will be date stamped and returned to the commenter.

Background

On May 14, 1998, Cessna Aircraft Company applied to amend the Model 525 Type Certificate to add a new Model 525A. The Model 525A is a derivative of the Model 525 currently approved under Type Certificate Data Sheet A1WI.

The Cessna Model 525A, a derivative of the Model 525, will be certified for operation to a maximum altitude of 45,000 feet. This will be the first of this series to be approved above 41,000 feet. The certification basis of the Model 525 was primarily 14 CFR part 23, as amended by Amendments 23–1 through 23–40, plus special conditions. This unusually high operating altitude constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, it is necessary to develop special conditions that provide the level of safety to that established by the regulations.

The FAA has previously issued Special Conditions No. 23–ACE–87, to another small turbojet airplane model with requested approval for operation up to 49,000 feet.

The FAA policy is to apply special conditions to part 23 airplanes when the certified altitude exceeds the capability of the oxygen system (in this case, the passenger system). This was the situation for a part 23 turbojet airplane. Thus, the special conditions were deemed to be appropriate for the Cessna Model 525A and provide the basis for formulating the special conditions described below:

Damage tolerance methods are proposed to assure pressure vessel integrity while operating at the higher altitudes. Crack growth data is used to prescribe an inspection program, which should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under 23.571 as amended by Amendment 23–48.

The cabin altitude after failure may not exceed the cabin altitude/time history curve limits shown in Figures 3 and 4.

Continuous flow passenger oxygen equipment is certified for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000 foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition, therefore, requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Type Certification Basis

Under the provisions of 21.101, Cessna Aircraft Company must show that the Cessna Model 525A meets the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet A1WI or the applicable regulations in effect on the date of application for the change to the Cessna Model 525A. 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 Data Sheet A1WI are as follows:

(1) Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 23–1 through 23–40;

(a) In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Cessna Model 525A must also be shown to comply with the following sections of part 23:

Federal Aviation Regulations §§ 23.331, 23.351, 23.421, 23.423, 23.425, 23.427, 23.939, and 23.1163 as amended by Amendments 23–1 through 23–42;

Federal Aviation Regulations §§ 23.943, 23.951, 23.957, 23.961, 23.967, 23.991, 23.993, 23.997, 23.999, 23.1001, 23.1011, 23.1019, 23.1041, 23.1061, 23.1189, 23.1322, 23.1357, 23.1391, 23.1393, 23.1395, and 23.1445 as amended by Amendments 23–1 through 23–43;

Federal Aviation Regulations §§ 23.305, 23.321, 23.361, 23.397, 23.479, 23.485, 23.613, 23.615, 23.621, 23.731 and 23.1549 as amended by Amendments 23–1 through 23–45;

Federal Aviation Regulations §§ 23.335, 23.337, 23.341, 23.343, 23.345, 23.347, 23.371, 23.393, 23.399, 23.415, 23.441, 23.443, 23.455, 23.457, 23.473, 23.499, 23.561, 23.571, 23.572, 23.611, 23.629, 23.673, and 23.725 as amended by Amendments 23–1 through 23–48;

Federal Aviation Regulations §§ 23.677, 23.723, 23.785, 23.787, 23.791, 23.853, 23.855, 23.1303, 23.1307, 23.1321, 23.1351, 23.1353, 23.1361, and 23.1401 as amended by Amendments 23–1 through 23–49;

Federal Aviation Regulations §§ 23.233, 23.235, 23.1555, and 23.1589 as amended by Amendments 23–1 through 23–50;

Federal Aviation Regulations §§ 23.901, 23.903, 23.929, 23.963, 23.965, 23.1013, 23.1043, 23.1143, 23.1183, 23.1191, and 23.1337 as amended by Amendments 23–1 through 23–51;

(2) Federal Aviation Regulations part 36 effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of TC issuance.

(3) Federal Aviation Regulations part 34 effective September 10, 1990, as amended by Amendment 34–1, Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.

(4) Special Conditions as follows:

(a) 23–ACE–55, additional requirements for engine location, performance, characteristics, and protection of electronic systems from lightning and high intensity radiated electromagnetic fields (HIRF).

(b) Special conditions adopted by this rulemaking action.

(5) Exemption: Exemption number 5759 granted. Model 525A to use Federal Aviation Regulations § 25.181 in lieu of damping criteria of Federal Aviation Regulations § 23.181(b).

(6) Compliance with ice protection will be demonstrated in accordance with Federal Aviation Regulations § 23.1419.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Cessna Model 525A 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 Model 525A must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 23 noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), 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 the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 21.101(a)(1).

Novel or Unusual Design Features

The Model 525A will incorporate the following novel or unusual design features:

The methods used to ensure pressure vessel integrity and to provide ventilation, air conditioning, and pressurization will be unique due to the operating altitude of this airplane.

Applicability

As discussed above, these special conditions are applicable to the Cessna Model 525A. Should the Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Cessna Aircraft Company Model 525A airplane.

1. Pressure Vessel Integrity

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization), of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

2. Ventilation

In addition to the requirements of § 23.831(b), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort during normal operating conditions and in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered recirculated air, based on the volume and composition at the corresponding cabin pressure altitude of no more than 8,000 feet.

3. Air Conditioning

In addition to the requirements of § 23.831, the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature/time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature/time history may not exceed the values shown in Figure 2.

4. Pressurization

In addition to the requirements of § 23.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system, in conjunction with any undetected, latent malfunctions or failures, must be considered.

(2) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening

having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b). The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air-conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4a and 4b of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Cessna must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

5. Oxygen Equipment and Supply

(a) In addition to the requirements of § 23.1441(d), the following applies: A quick-donning oxygen mask system with a pressure-demand, mask mounted regulator must be provided for the flightcrew. It must be shown that each quick-donning mask can, with one hand and within 5 seconds, be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand.

(b) In addition to the requirements of § 23.1443, the following applies: A continuous flow oxygen system must be provided for each passenger.

(c) In addition to the requirements of § 23.1445, the following applies: If the flightcrew and passengers share a common source of oxygen, a means to separately reserve the minimum supply required by the flightcrew must be provided.

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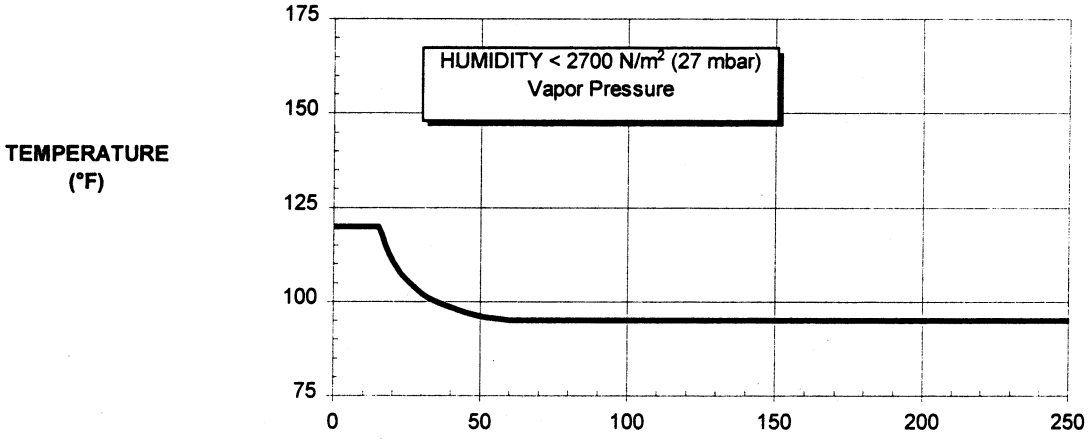
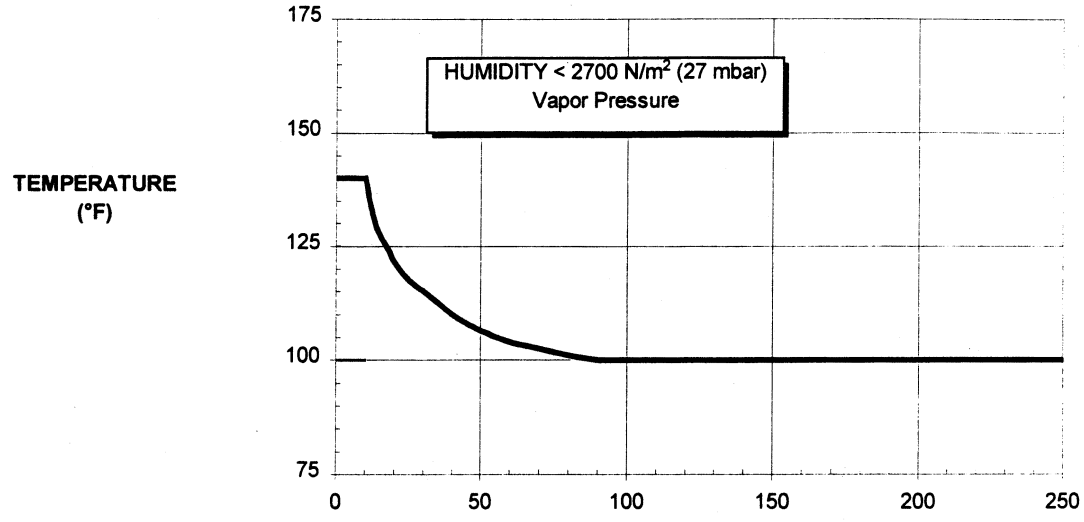


TIME - TEMPERATURE RELATIONSHIP
FIGURE 1



TIME - TEMPERATURE RELATIONSHIP
FIGURE 2

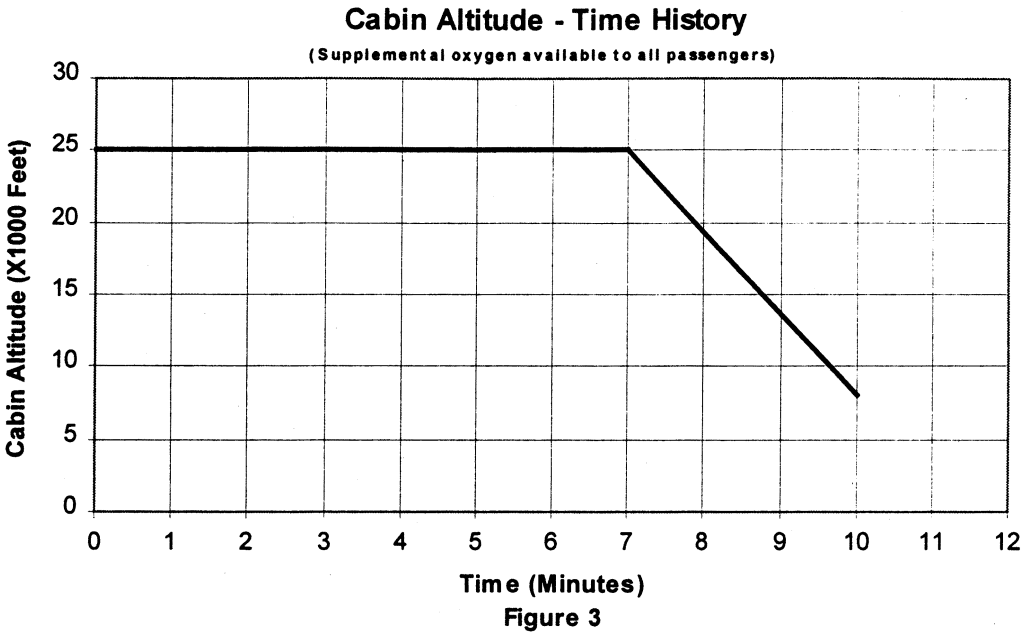


Figure 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

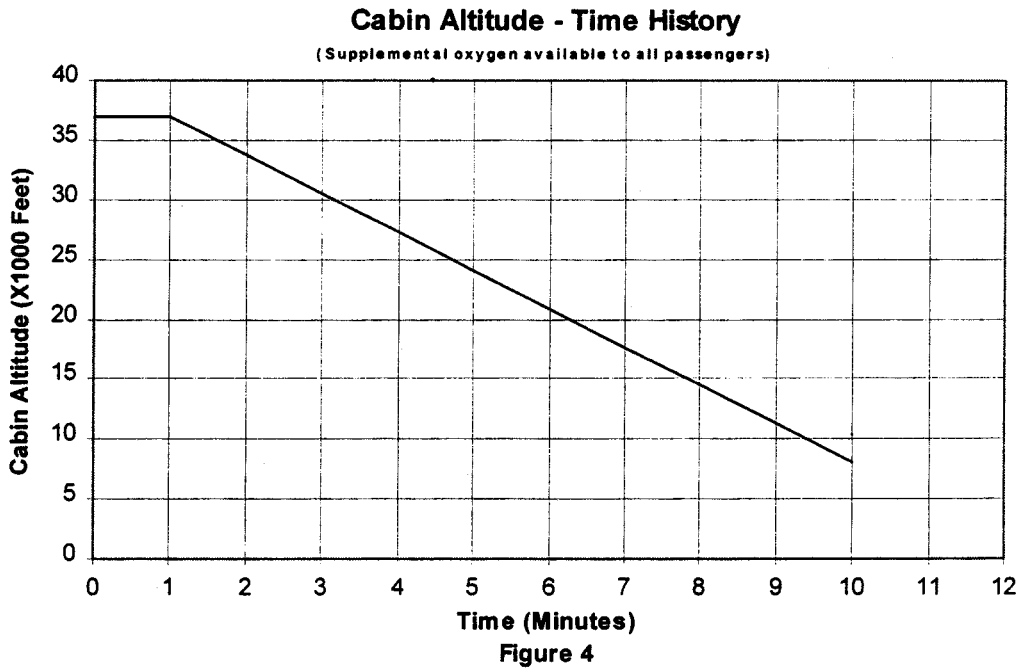


Figure 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Kansas City, Missouri on August 31, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23719 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Sab Model SAAB SF340A and SAAB 340B Series Airplanes

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 Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require repetitive inspections of the control quadrant for loose screws, and replacement of the control quadrant with a modified part, which constitutes terminating action for the repetitive inspections. This proposal is promoted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the power levers from binding due to the backing out of screws that secure the solenoid bracket within the flight idle stop assembly, which could result in the malfunction of the flight idle stop mechanism and the inability to move the power levers to flight idle.

DATES: Comments must be received by October 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 or or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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 notice must submit a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket Number 99–NM–200–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, Tranport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that an operator has reported a problem with the left-hand power lever binding and not going into reverse after landing. The investigation showed that a screw had backed out of a cam and caused binding within the control quadrant. Backing out of the screw has been attributed to failure to apply locking compound during installation. Another screw was also found to be missing locking compound. This condition, if not corrected, could result in the malfunction of the flight idle stop mechanism and the inability to move the power levers to flight idle.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–76–043, Revision 01, dated July 29, 1999, which describes procedures for repetitive inspections of the control quadrant for loose screws, and replacement of the control quadrant with a modified control quadrant. Such replacement would eliminate the need for the repetitive inspections. The accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. the LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–143, dated July 2, 1999, in order to assure the continued airworthiness of these airplanes in Sweden.

The Saab service bulletin references Adams Rite Aerospace Service Letter General SL–01, dated April 6, 1999, as an additional source of service information to accomplish the inspection.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 289 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $17,340, or $60 per airplane, per inspection cycle.

The FAA estimates that it would take approximately 4 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $69,360, or $240 per airplane.

The cost impact figures discussed above are 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 AD were not adopted.

Regulatory Impact

The regulations proposed herein would 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 Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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:

Saab Aircraft AB: Docket 99–NM–200–AD.

Applicability: Saab Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, series number 160 through 459 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the power levers from binding due to the backing our of screws that secure the solenoid bracket within the flight idle stop assembly, which could result in the

malfunction of the flight idle stop mechanism and the inability to move the power levers to flight idle, accomplish the following:

Inspection

(a) Within 800 flight hours after the effective date of this AD, perform a borescopic inspection of the control quadrant for loose screws, in accordance with Saab Service Bulletin 340–76–043, Revision 01, dated July 29, 1999. If no loose screws are found, repeat the inspection thereafter at intervals not to exceed 800 flight hours, until the requirements of paragraph (c) are accomplished.

Note 2: Saab Service Bulletin 340–76–043, dated July 2, 1999, references Adams Rite Aerospace Service Letter General SL–01, dated April 6, 1999, as an additional source of service information to accomplish the inspection.

Note 3: Inspections and replacements accomplished prior to the effective date of this AD in accordance with Saab Service Bulletin 340–76–043, dated July 2, 1999, are considered acceptable for compliance with the applicable action specified in this amendment.

Corrective Action

(b) If any loose screw is found during any inspection performed in accordance with paragraph (a) of this AD, prior to further flight, replace the exiting control quadrant with a modified control quadrant in accordance with Saab Service Bulletin 340–76–043, dated July 2, 1999.

Terminating Action

(c) Within 8,000 flight hours or 6 years after the effective date of this AD, whichever occurs earlier: Replace the existing control quadrant with a modified control quadrant in accordance with Saab Service Bulletin 340–76–043, dated July 2, 1999. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install, on any airplane, a control quadrant with a part number and reference letter combination other than the following: part number 53082 and reference letter A

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operations shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the, Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–143, dated July 2, 1999.

Issued in Renton, Washington, on September 7, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23743 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–12–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that currently requires certain changes to the procedures in the Airplane Flight Manual (AFM) related to operation of the emergency lighting system. This action would require modification of the emergency lighting system and a revision to the AFM to ensure the preservation of the airplane batteries. This proposal would also provide, for certain airplanes, terminating action for the existing AFM revision, and replacement with a different AFM revision. This proposal would also expand the applicability to include certain Model A310 and A300–600 series airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure that the emergency lighting is available for evacuation in an emergency situation.

DATES: Comments must be received by October 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 notice may be changed in light of the comments received.

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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–205–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. 98–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 8, 1988, the FAA issued AD 88–18–01, amendment 39–5998 (53 FR 30975, August 17, 1988), applicable to certain Airbus Model A300 series airplanes, to require certain changes to the procedures in the FAA-approved Airplane Flight Manual (AFM) related to operation of the emergency lighting system. That action was prompted by pilot reports that the emergency lighting system did not illuminate with loss of AC power, and that the AFM did not contain compensating procedures which would ensure that the lights would be turned on by the flightcrew prior to the need for an emergency evacuation. The requirements of that AD are intended to ensure that emergency lighting for evacuation of the airplane's occupants would be provided in an emergency when the airplane's normal AC power is interrupted.

In the preamble to AD 88–18–01, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has developed new service information that addresses the unsafe condition.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–33–0119 (for Model A300 series airplanes), A310–33–2025 (for Model A310 series airplanes), and A300–33–6020 (for Model A300–600 series airplanes); all dated March 1, 1993; and A300–33–6013, dated March 30, 1989 (for Model A300–600 series airplanes). These service bulletins describe procedures for modification of the wiring of the emergency lighting system. The two service bulletins for Model A300–600 series airplanes apply to different groups of airplanes. Airbus has also issued temporary revisions 3.02.00/7, 3.02.00/8, and 3.02.00/11 to the applicable AFM to ensure the preservation of the airplane batteries. Accomplishment of the actions specified in the service bulletins (and incorporation of the AFM temporary revisions) is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as an acceptable means of compliance with French airworthiness directive 89–107–096(B)R4, dated August 13, 1997, which was issued to ensure the continued airworthiness of these airplanes in France.

Applicability of Proposed AD

The applicability of the existing AD has been expanded in this proposed AD to correspond to that of the French airworthiness directive.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 88–18–01 to continue to require certain changes to the Model A300 AFM until the emergency lighting system is modified. The proposed AD would also require, for all affected airplanes, modification of the emergency lighting system and a revision to the AFM procedures in order to preserve battery power. This proposed AD would provide, for certain airplanes, terminating action for the existing AFM revision, and replacement with a different AFM revision.

Difference Between Proposed Rule and Foreign AD

The proposed AD would differ from the parallel French airworthiness directive in that the French airworthiness directive mandates a different set of service bulletins than this proposed AD. The DGAC has approved the service bulletins that the FAA proposes to require as an equivalent means of satisfying the requirements of the French airworthiness directive, however. The modifications described by the service bulletins mandated by the French airworthiness directive do not fully satisfy the FAA requirements for emergency lighting as specified in section 25.812 of the Federal Aviation Regulations (14 CFR part 25). Therefore, Airbus produced a set of service bulletins that modified the system in such a manner that it would comply with the FAA requirements. However, the modification specified in the service bulletins specified in this proposed AD requires that an AFM change be introduced that would ensure that, in the event of the loss of both engines or both engine electrical generators, the flightcrew would take the necessary action to ensure that emergency lighting would be available when needed. The modification specified in the service bulletins mandated by the French airworthiness directive does not require the AFM changes. The service bulletins proposed to be required by this AD action and those mandated by the French airworthiness directive are different, but they address the same unsafe condition.

Cost Impact

There are approximately 157 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 88–18–01, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $60 per airplane.

The modification that is proposed in this AD action would take approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $500 per airplane. Based on these figures, the cost impact of the proposed modification of this AD on U.S. operators is estimated to be $248,060, or $1,580 per airplane.

The AFM revision that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AFM revision of this AD on U.S. operators is estimated to be $9,420, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would 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 Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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 removing amendment 39–5998 (53 FR 30975, August 17, 1988), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–205–AD. Supersedes AD 88–18–01, Amendment 39–5998.

Applicability: Model A300 and A310 series airplanes, except those on which Airbus Modification 10002 has been accomplished; and Model A300–600 series airplanes, except those on which Airbus Modification 7738 or 10002 has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the emergency lighting is available for evacuation in an emergency situation, accomplish the following:

Restatement of Requirements of AD 88–18–01, Amendment 39–5998

AFM Revision

(a) For Model A300 series airplanes (excluding Model A300–600 series airplanes): Within 10 days after September 2, 1988 (the effective date of AD 88–18–01, amendment 39–5998), the following procedures must be applied and a copy of this AD or the changes indicated below must be inserted in the appropriate Section of the Airplane Flight Manual (AFM), as indicated below:

(1) This sentence is to be inserted facing 3–02–00 page 11:

''EMERGENCY PROCEDURES-DITCHING

When ditching, the MIN CABIN LT selector (if installed) must be switched ON.''

(2) This sentence is to be inserted facing 3–02–00 page 12:

''EMERGENCY PROCEDURES-EMERGENCY EVACUATION

When the procedure EMERGENCY EVACUATION is applied, the EMER EXIT LT selector must be selected 'ON' after parking brake is ON.''

(3) This sentence is to be inserted facing 4–03–00 page 1:

''NORMAL PROCEDURES-TAXI

Prior to push back, the MIN CABIN LT selector (if installed) must be switched 'ON' and remain ON until gear retraction.''

(4) This sentence is to be inserted facing 4–03–00 page 4:

''NORMAL PROCEDURES-LANDING

Before landing, the MIN CABIN LT selector (if installed) must be switched 'ON' and should remain ON until engine shutdown or until parked.''

New Requirements of This AD

Modification

(b) For all airplanes: Within 6 months after the effective date of this AD, modify the emergency lighting system, in accordance with the applicable service bulletin specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4), of this AD.

(1) For Model A300 series airplanes: Airbus Service Bulletin A300–33–0119, dated March 1, 1993.

(2) For Model A310 series airplanes: Airbus Service Bulletin A310–33–2025, dated March 1, 1993.

(3) For Model A300–600 series airplanes listed in Airbus Service Bulletin A300–33–6013, dated March 30, 1989: Airbus Service Bulletin A300–33–6013, dated March 30, 1989.

(4) For Model A300–600 series airplanes listed in Airbus Service Bulletin A300–33–6020, dated March 1, 1993: Airbus Service Bulletin A300–33–6020, dated March 1, 1993.

AFM Revisions

(c) Prior to further flight following accomplishment of the modification required by paragraph (b) of this AD: Revise the FAA-approved Airplane Flight Manual (AFM) by adding the temporary revision (TR) specified in paragraph (c)(1), (c)(2), or (c)(3), as applicable, of this AD.

(1) For Model A300 series airplanes: Insert AFM TR 3.02.00/7. After accomplishment of the modification required by paragraph (b) of this AD, the TR required by paragraph (a) of this AD may be removed [paragraph (a) applies to Model A300 series airplanes only].

(2) For Model A310 series airplanes: Insert AFM TR 3.02.00/8.

(3) For Model A300–600 series airplanes: Insert AFM TR 3.02.00/11.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directive 89–107–096(B)R4, dated August 13, 1997.

Issued in Renton, Washington, on September 7, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23742 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

RIN 1515–AC15

Anticounterfeiting Consumer Protection Act: Customs Entry Documentation

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to implement section 12 of the Anticounterfeiting Consumer Protection Act of 1996 (ACPA), enacted by Congress to protect consumers and American businesses from counterfeit copyrighted and trademarked products. Section 12 of the ACPA concerns the content of entry documentation required by Customs to determine whether the imported merchandise or its packaging bears an infringing trademark. The proposed regulatory provision requires importers to provide on the invoice a listing of all trademarks appearing on imported merchandise and its packaging. The amendment is designed to help Customs fight counterfeiting more effectively.

DATES: Comments must be submitted by November 12, 1999.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Suite 3000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lou Alfano, Commercial Enforcement, Office of Field Operations, (202) 927–0005.

SUPPLEMENTARY INFORMATION:

Background

Finding that counterfeit products cost American businesses an estimated $200 billion each year worldwide, Congress enacted the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) to make sure that Federal law adequately addresses the scope and sophistication of modern counterfeiting. The provisions of the ACPA are designed to provide important weapons in the fight against counterfeiters. On July 2, 1996, the President signed the ACPA into law (Pub.L. 104–153, 110 Stat. 1386).

The ACPA contains 14 sections, 13 of which are substantive in nature. Section 14 of the ACPA directs the Secretary of the Treasury to prescribe such regulations or amendments to existing regulations as may be necessary to implement and enforce particular provisions of the ACPA.

This document concerns section 12 of the ACPA, which amends section 484(d) of the Tariff Act of 1930 (19 U.S.C. 1484(d)) concerning Customs entry documentation. The amendment to section 484(d) adds a new provision authorizing the Secretary of the Treasury to require that entry documentation contain such information as may be necessary to enable Customs to determine whether the imported merchandise bears an infringing trademark on either the goods or packaging in violation of section 42 of the Act of July 5, 1946 (commonly referred to as the ''Trademark Act of 1946'' (15 U.S.C. 1124)), or any other applicable law. The amendment enables Customs to identify shipments likely to contain counterfeit products that come from locations where goods bearing a particular mark are not legitimately manufactured.

In this document Customs proposes to implement the entry documentation content requirement by amending paragraph (a)(3) of § 141.86, Customs Regulations (19 CFR 141.86(a)(3)), which concerns the general information requirements of invoices, to specifically require that importers provide on the invoice a listing of any trademark information appearing on imported merchandise and its packaging. This amendment is necessary because while the current section requires information regarding ''marks, numbers, and symbols'' to be set forth on the invoice, it does not specify trademark information.

Comments

Before adopting this proposed regulatory amendment as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs 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, U.S. Customs Service, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this amendment, if adopted, will not have a significant economic impact on a substantial number of small entities, as the amendment concerns identifying information regarding imported merchandise of a sort that is already maintained by the importer. Accordingly, this amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Foreign trade statistics, Invoices, Packaging, Prohibited merchandise, Release of merchandise, Reporting and recordkeeping requirements, Restricted merchandise (counterfeit goods), Trademarks, Trade names.

Amendment to the Regulations

For the reasons stated above, it is proposed to amend part 141 of the Customs Regulations (19 CFR part 141) as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

2. In § 141.86, paragraph (a)(3) is revised to read as follows:

§ 141.86 Contents of invoices and general requirements.

(a) * * *

(3) A detailed description of the merchandise, including the name by which it is known; marks, numbers, and symbols under which it is sold by the seller or manufacturer to the trade in the country of exportation; the grade or quality of the merchandise; and a listing of any trademarks appearing on the merchandise or its components; together with a listing of the marks, numbers, and any trademarks appearing on the

packages in which the merchandise is packed;

* * * * *

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 6, 1999

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury

[FR Doc. 99–23686 Filed 9–10–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 09–99–007]

Safety Zone, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Notice; withdrawal of proposed rule.

SUMMARY: The Coast Guard is withdrawing a notice of proposed rulemaking (NPRM) to establish a temporary safety zone on the American side of the Detroit River for the Windsor Can-AM Offshore Power Boat Race. The event sponsor withdrew his application for safety reasons, and based on comments received by the Coast Guard, the proposed rule was criticized and deemed not in the best interest of this vital international waterway.

DATES: This proposed rule is withdrawn effective July 30, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at Marine Safety Office, Detroit between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG French, Coast Guard Marine Safety Office Detroit, 110, at 313–568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory History

On 3 May, 1999, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (64 FR 23570–23571) that the American side of the Detroit River would be closed for the Windsor Can-Am Offshore Race, which at the time was scheduled to take place on August 22, 1999. In the mean time, the Coast Guard received notice from the event organizer on June 4, 1999 of his intention not to hold the race. The organizer noted safety concerns resulting from recent fatal accidents in the Detroit river where high currents and murky waters made rescue of victims impossible. The event sponsor believed such a race in such a location was ''unsafe.''

The Coast Guard received 7 letters in response to its proposed rulemaking during the public comment period, all of which were opposed to the closure. Relevant issued commenters raised ranged from adverse economic consequences that were likely to result from the river closure to possible violations of existing binational agreements between the United States and Canada

1. The Detroit and St. Clair River system hereafter called the Detroit River Corridor, is a key international trade route, that if closed, would adversely affect the entire Great Lakes and restrict access to other key economic ports.

2. The proposed closure appears to contradict the Boundary Waters Treaty of 1909 which states in part, ''The navigation of all boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels and boats of both countries equally.'' The treaty goes on to establish a precedence to be observed among the various uses enumerated . . . for these waters.'' According to the treaty, ''No use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

(1) Uses for domestic and sanitary purposes;

(2) Uses for navigation

(3) Uses for power and irrigation.''

As the term ''domestic'' is not defined, and recreational use is not spelled out or given priority in the treaty, decisions on boundary water uses are in the purview of the International Joint Commission.

3. Closure of the river for even a few hours has a ripple effect on commercial shipping in the Great Lakes that causes more than a minor inconvenience to vessels. Closure of any part of the Detroit River Corridor presents safety issue for vessel operators related to reduced speed and steerage. Compound that with closure of the Belle Isle Anchorage and, for the prudent commercial mariner, you shut down the entire river system for up to six hours, shutting down commercial navigation from Lake Erie to Lake Huron. Such a closure would have a detrimental effect not only on vessel operators, but also pilots and terminal operators, with impacts on the time sensitive nature of delivering raw materials to Great lakes ports and plants.

4. Race locations are variables that can be controlled, so as not to impede safe commercial navigation. Races similar to the one proposed are conducted in other areas all over the Great Lakes without river closures. A notable example is the Detroit Thunderfest. Those events are held in locations mutually agreeable to recreational and navigational interests. Closure of the river for this event to promote essentially a single sponsor's commercial use of the river over navigational use would set a precedent that might lead to applications for more such events in the future, resulting in further restrictions to navigation. More than that, though, a decision to close the river to the commercial advantage of one sponsor gives that sponsor a material benefit that other sponsors do not get—an arbitrary and capricious decision in favor of one person or group, made to the disadvantage and harm of others. It isn't fair.

5. The proposed rulemaking does not address fully the idea of just compensation for the maritime community adversely affected by the action. Costs are difficult to calculate, especially hidden costs. A more detailed agreement on compensation would need to be worked out well in advance of any such event.

The Coast Guard agrees with all these points of contention. Before withdrawing his permit application, the event sponsor did not have the benefit of the public comments in this matter or an opportunity to address the issues raised during the comment period. The Coast Guard appreciates all the efforts of the regulated community in sharing its views and will retain the public docket for future use. Accordingly, the Coast Guard is withdrawing the notice of proposed rulemaking and terminating further rulemaking on this proposal. Based on the regulatory history of this event, the Coast Guard Captain of the Port Detroit will be reluctant to consider proposed closures in any part of the Detroit River Corridor in the future. The Coast Guard will also work closely with Canadian Officials and the International Joint Commission to ensure that all provisions of the Boundary Waters Treaty of 1909 are upheld.

Dated July 30, 1999.

B. P. Hall,

Commander, USCG, Acting Captain of the Port, Detroit.

[FR Doc. 99–23718 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 190–9930b; TN 196–9931b; FRL–6433–3]

Approval and Promulgation of Implementation Plans, Tennessee: Approval of Revisions to the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 17, 1997, and May 8, 1997, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted revisions to the Tennessee State Implementation Plan (SIP). The revisions pertain to Sulfur Dioxide Emission Regulations for the New Johnsonville and Copper Basin Additional Control Areas.

In the Rules section of this **Federal Register**, EPA is approving the Tennessee State Plan submittal 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 adverse comments are received, 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 on this action.

DATES: Written comments must be received on or before October 13, 1999.

ADDRESSES: Written comments should be addressed to Scott Martin at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036.

SUPPLEMENTARY INFORMATION:

See the information provided in the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: August 13, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–23192 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL193–1b; FRL 6435–5]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the July 9, 1999, Illinois site-specific State Implementation Plan (SIP) revision revising Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) requirements for Sun Chemical Corporation in Northlake, Illinois. The SIP revision exempts 17 resin storage tanks from bottom or submerged fill pipe requirements, subject to certain conditions.

In the final rules section of this **Federal Register,** the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to 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 October 13, 1999.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: August 30, 1999.

Robert Springer,

Acting Regional Administrator, Region 5.

[FR Doc. 99–23582 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–75–1–9910b; KY–97–1–9911b; FRL–6436–6]

Approval and Promulgation of Implementation Plans

Kentucky: Approval of Revisions to the Louisville State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Air Pollution Control District of Jefferson County portion of the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet on November 12, 1993, and amended on April 5, 1994, and June 30, 1997, which includes the 15 Percent Rate-of-Progress Plan (15 percent plan) for the Louisville moderate ozone nonattainment area. This submittal was made to meet the 15 percent reduction in emissions of volatile organic compounds (VOCs) requirement of section 182(b)(1)(A) of the Clean Air Act, as amended in 1990 (CAA).

In the Rules section of this **Federal Register**, EPA is approving the

Kentucky Plan submittal 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 adverse comments are received, 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 on this action.

DATES: Written comments must be received on or before October 13, 1999.

ADDRESSES: Written comments should be addressed to Scott Martin at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, Division of Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final document which is located in the Rules section of this **Federal Register**.

Dated: August 20, 1999.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 99–23580 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 51, 68, 76

[WT Docket No. 99–217; CC Docket No. 96–98; DA 99–1563]

Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Commercial Wireless Division (the ''Division'') of the Federal Communications Commission gives notice that the Commission granted in part motions for extension of time to file comments and reply comments on the Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99–217 and the Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98 concerning the promotion of competitive networks in local telecommunications markets. These motions were filed by Commonwealth Edison Company, Duke Energy Corporation, and Southern Company (collectively, the ''Utilities'') and the Local and State Government Advisory Committee (LSGAC). The Division found that the record for this Notice of Proposed Rulemaking, Third Further Notice of Proposed Rulemaking, and Notice of Inquiry might not be adequately developed unless additional time was granted to all interested parties to prepare comments and reply comments.

DATES: The deadline for receipt of comments on the Notice of Proposed Rulemaking in WT Docket No. 99–217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98 was extended until August 27, 1999 and reply comments on these items are due September 27, 1999. Comments on the Notice of Inquiry in WT Docket No. 99–217 are due October 12, 1999 and reply comments on this item are due December 13, 1999.

ADDRESSES: Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW; TW–A325; Washington, DC 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. *See* the ''Supplementary Information'' section below for additional information about paper and electronic filing.

FOR FURTHER INFORMATION CONTACT: Jeff Steinberg at (202) 418–0896 or Joel Taubenblatt at (202) 418–1513 (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is a summary of the Order Extending Pleading Cycle (the ''Order''), DA 99–1563, adopted August 6, 1999 and released August 6, 1999. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 445 12th Street, SW, CY–B400, Washington, DC 20554. The document is also available via the Internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/index.html>.

In this document, the Division grants in part a motion by the Utilities for an extension of time to file comments and reply comments on the Notice of Proposed Rulemaking in WT Docket No. 99–217, 64 FR 41887, August 2, 1999, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98, 64 FR 41884, August 2, 1999. The Division also grants in part a request by LSGAC for an extension of time to file comments and reply comments on the Notice of Inquiry in WT Docket No. 99–217, 64 FR 41883, August 2, 1999. The Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99–217 and the Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98 were issued by the Commission on July 7, 1999 under FCC 99–141.

This document states that, although it is the policy of the Commission that motions for extensions of time shall not be routinely granted, the Division finds that the record for the Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99–217 and the Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98 might not be adequately developed unless additional time is granted to all interested parties to prepare comments and reply comments. Therefore, the Order extends the pleading cycle for the Notice of Proposed Rulemaking in WT Docket No. 99–217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98 to August 27, 1999 for comments and September 27, 1999 for reply comments. In addition, the Order extends the pleading cycle for the Notice of Inquiry in WT Docket No. 99–217 to October 12, 1999 for comments and December 13, 1999 for reply comments.

Filing Procedures

Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments in accordance with the schedule listed in the ''Dates'' section above. 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 24,121, 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, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, DC 20554.

Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW, CY–B400, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

List of Subjects

47 CFR Parts 1 and 51

Communications common carriers, Telecommunications.

47 CFR Part 68

Communications common carriers, Communications equipment.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–23404 Filed 9–10–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990811218–9218–01; I.D. 050399A]

RIN 0648–AL27

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 12 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement measures contained in Amendment 12 to the Northeast Multispecies Fisheries Management Plan (FMP) to address the management of silver hake (whiting), red hake, offshore hake, and ocean pout and to implement the framework measure approved in Amendment 11 to the FMP regarding essential fish habitat. Amendment 12 and these proposed regulations would establish differential whiting possession limits based on the mesh size with which a vessel chooses to fish. The intended effect of this action is to reduce fishing mortality rates on whiting and red hake to eliminate overfishing and rebuild the biomass in accordance with the requirements of the Sustainable Fisheries Act (SFA).

DATES: Comments must be received on or before October 28, 1999.

ADDRESSES: Comments on this proposed rule should be sent to Pat Kurkul, Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Proposed Rule for Amendment 12.''

Comments regarding burden-hour estimates for collection-of-information requirements or other aspects of the collection-of-information requirements contained in this proposed rule should be sent to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the Amendment 12 document, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), the Supplemental Environmental Impact Statement (SEIS), and other supporting documents for the FMP amendment, as well as all documents pertaining to Amendment 11, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, Massachusetts 01906–1036.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Management Specialist, 978–281–9288.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) developed Amendment 12 to the Northeast Multispecies FMP (commonly called the Whiting Amendment) primarily to comply with the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the SFA on October 11, 1996. NMFS published a notice of availability for this amendment in the **Federal Register** at 64 FR 29257, June 1, 1999, soliciting public comments on this amendment through August 2, 1999. Public comments that were received on or before August 2, 1999, will be considered in the approval/disapproval decision. Comments received after that date, but before the end of the comment period for this proposed rule, will not be considered in the approval/disapproval decision of the amendment, but will be considered in the decision on issuance of the final rule with respect to matters not related to approval/disapproval of FMP measures. Copies of Amendment 12 are available upon request (see **ADDRESSES**).

Whiting and red hake have been part of the Northeast Multispecies FMP since the implementation of Amendment 4 in 1991. Since that time, one reason no management measures have existed to manage directly the whiting and red hake fisheries is that management measures incorporated into the Multispecies FMP for other species provide indirect protection for whiting

and red hake. Geographic areas that are closed to fishing and minimum mesh sizes that are inefficient at catching whiting and red hake provided some level of protection for whiting and red hake. However, directed whiting fisheries in the Southern New England Regulated Mesh Area (SNE RMA) and exempted or experimental fisheries in the Gulf of Maine/Georges Bank Regulated Mesh Area (GOM/GB RMA) have continued to produce high levels of whiting and red hake catches. In anticipation of additional restrictions to manage whiting, the Council established September 9, 1996, as the control date for whiting and announced that it could limit future access to the whiting fishery through a moratorium on whiting permits.

In September 1997, NMFS' report to Congress on the ''Status of Fisheries of the United States'' concluded that red hake and the Southern stock of whiting are overfished and that the Northern stock of whiting is approaching an overfished condition. In response, the Council began the development of Amendment 12 to specifically address overfishing.

Amendment 12 proposes to end overfishing in 4 years. Management measures in years 1, 2, and 3 would be the same, unless changed through framework action or amendment. If the reduction in fishing mortality and exploitation during the first 3 years is not sufficient to meet the goals of Amendment 12, a fourth year default measure has been proposed to achieve the target fishing mortality rates and end overfishing.

Amendment 12 proposes to do the following: (1) Establish new overfishing definitions for two stocks of silver hake, two stocks of red hake, and offshore hake (*Merluccius albidus*); (2) specify Optimum Yield (OY) for silver hake (whiting), red hake and offshore hake; (3) identify whiting, red hake, and offshore hake as ''small mesh multispecies''; (4) identify geographic areas for potential use in management of different stocks of whiting; (5) implement a moratorium on commercial permits to fish for whiting, red hake and offshore hake (small mesh multispecies); (6) implement an open access permit category to allow an incidental catch; (7) implement new measures for the Cultivator Shoal Whiting Fishery; (8) initiate management measures for all areas excluding the Cultivator Shoal Whiting Fishery based on mesh size/possession limit categories; (9) add measures which may be implemented by a framework adjustment; (10) implement codend specifications and restrictions on net strengtheners; (11) restrict the transfer of small mesh multispecies; (12) provide a default measure to be implemented at the beginning of year 4 if management measures do not meet the fishing mortality objectives; (13) designate Essential Fish Habitat for offshore hake; and (14) establish a Whiting Monitoring Committee (WMC).

After a preliminary review of Amendment 12, NMFS found that the limited access program would be inconsistent with national standard 4 and section 304(e) of the Magnuson-Stevens Act. The qualification criteria allow vessels that participated in either the Gulf of Maine whiting raised footrope or separator trawl experimental fisheries to qualify for a limited access permit with 1,000 lb (453.6 kg) of landings over 3 years, rather than 50,000 lb (22,680 kg) of landings over 18 years. Vessels would be subject to the same restrictions regardless of how the vessel qualified for the permit. This portion of the proposed limited access program is inconsistent with national standard 4 because different sectors of the industry could qualify for the same level of fishing with different landings requirements. Further, vessels may have been excluded from participation in experimental fisheries because NMFS imposed participation restrictions and these restrictive controls may have discouraged vessels from participating.

The limited access program also proposes that at the beginning of year 6 of the Amendment, unless otherwise extended, vessels would be eligible for limited access small mesh multispecies permits without having to meet the landings criteria, provided the vessels possessed a limited access multispecies permit that was valid on the date the final rule for this amendment is published and that continues to be valid in year 6. The sunset provision may give vessel owners who would not qualify for the limited access permit unrealistic expectations that they may be able to participate in the whiting (small mesh multispecies) fisheries as a limited access vessel when it is unlikely to happen. Further, there has been no analysis of the potential effects of such effort on the rebuilding schedule. Amendment 12 proposes to end overfishing in year 4 and to rebuild the stocks of whiting and red hake within 10 years. Because it is uncertain that the fishery could sustain additional vessel participation just 1 year beyond the target date to end overfishing, rebuilding goals may be compromised. This measure would, therefore, be inconsistent with section 304(e) of the Magnuson-Stevens Act that specifies that overfished fisheries be rebuilt within a period not to exceed 10 years.

As a result of this preliminary review, NMFS is returning the limited access program to the Council in its entirety. To return only the two problematic portions would alter significantly the limited access program proposed in Amendment 12, thus changing the limited access program that was approved by the majority of the voting members of the Council. Under section 304(c)(3) of the Magnuson-Stevens Act, the Secretary of Commerce may not implement a limited access system that has not been approved by the majority of the voting members of the Council. Therefore, NMFS's only option in order to avoid implementing the two problematic measures of the limited access program is to exclude the limited access portion of Amendment 12 from regulations proposed for public comment. The open access permit category for small mesh multispecies is also omitted from this regulation because it would serve no purpose without the limited access permit categories.

Proposed Measures

The ''Open Access Nonregulated Multispecies Permit'' would be renamed the ''Open Access Multispecies Permit'' to avoid confusion that would result from the elimination of the definition of ''Nonregulated Multispecies.'' Vessels currently issued ''Open Access Nonregulated Multispecies Permits'' would not be required to acquire a new ''Open Access Multispecies Permit,'' but rather would receive a renamed permit when they apply for permit renewal at the end of the fishing year in which this regulation is implemented. The restrictions pertaining to the ''Open Access Nonregulated Multispecies Permit'' would remain in effect for these vessels.

Amendment 12 proposes to change the season for the Cultivator Shoal Whiting Fishery by decreasing its duration by 1 month. The Cultivator Shoal Whiting Fishery season would begin on June 15 and end on September 30 of each year. Currently, the fishery ends on October 31 each year. The reduction in fishing effort by the elimination of the month of October is expected to contribute toward Amendment 12's overall goal of a 63–percent reduction in whiting exploitation across all stock areas.

Vessels enrolled in the Cultivator Shoal Whiting Fishery would be restricted to a minimum mesh size of 3 in (7.62 cm) subject to applicable codend restrictions. Vessels enrolled in the fishery would also be restricted to a

possession limit of 30,000 lb (13,608 kg) of whiting and offshore hake. Vessels would be allowed to fish in areas other than the Cultivator Shoal Whiting Fishery area while enrolled in this fishery but would be subject to the more restrictive mesh and possession measures regardless of where they fish. These measures allow participants in the Cultivator Shoal Whiting Fishery flexibility to fish in other whiting areas when whiting are not concentrated on the Cultivator Shoal. The possession limit would serve to eliminate extremely large whiting trips that contribute to excessive fishing mortality in the area, yet allow for economically feasible trips.

Amendment 12 would implement whiting and offshore hake possession limits for all areas excluding the Cultivator Shoal Whiting Fishery. Vessels issued a Federal multispecies permit would be allowed the following possession limits of whiting and offshore hake: up to 3,500 lb (1,588 kg), while using a mesh size less than, but not equal to 2.5 in (6.35 cm); up to 7,500 lb (3,402 kg), while using a codend mesh size of 2.5 in (6.35 cm) or larger, provided the vessel has a letter of authorization from the Administrator, Northeast Region, NMFS (Regional Administrator) on board; and up to 30,000 lb (13,608 kg), while using a codend mesh size of 3 in (7.62 cm) or larger, provided the vessel has a letter of authorization from the Regional Administrator on board. Letters of authorization for these mesh size categories would be valid for a minimum of 30 days. However, vessels could withdraw from the minimum mesh size category after a minimum of 7 days, but they would be subject to a possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use and would not be able to re-enter the original authorization category for the remainder of the original 30 days. Vessels that do not receive a letter of authorization would automatically be restricted to a possession limit of 3,500 lb (1,588 kg) of whiting and offshore hake, regardless of the mesh size in use.

Amendment 12 proposes that while participating in the Northern shrimp fishery, to retain whiting and offshore hake, a vessel would be required to be issued a Federal multispecies permit and that vessels would be allowed a possession limit of whiting and offshore hake equal to the amount of Northern shrimp on board up to 3,500 lb (1,588 kg).

This proposed rule includes instructions for vessel owners to follow in order for them to receive the required letters of authorization to participate in one of the minimum mesh size and corresponding possession limit categories. To request a letter of authorization, vessel owners would be required to call the Northeast Region Permit Office during normal business hours and provide the vessel name, owner name, permit number, the desired mesh size/possession limit category and the period of time that the vessel would be enrolled. Since letters of authorization would be effective on the date of receipt vessel owners should allow appropriate processing and mail time. To withdraw from a category, vessel owners must call the Northeast Region Permit Office. Withdrawals would be effective upon date of request.

Amendment 12 proposes that a vessel issued a Federal multispecies permit would be allowed to transfer small mesh multispecies at sea up to 500 lb (226.8 kg), provided it has a letter of authorization to transfer fish at sea on board the vessel. A total of 500 lb (226.8 kg) would automatically be deducted from the vessel's possession limit regardless of the actual amount transferred. Vessels receiving the small mesh multispecies at sea would be required to have a receipt for the transferred fish. The allowance for transfers at sea would provide continued flexibility for vessels that have traditionally purchased bait from other vessels while in the course of targeting such other species as lobster or tuna.

Amendment 12 proposes new codend specifications for vessels fishing for small mesh multispecies. For vessels less than or equal to 60 ft (18.28 m) in length overall, the mesh size would be determined by measuring the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net. For a vessel greater than 60 ft (18.28 m) in length overall, the mesh size would be determined by measuring the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net. This restriction would not apply to vessels using less than 2.5–in (6.35 cm) mesh and being subject to other codend specifications specified in this part.

The proposed management measures controlling mesh size are intended to provide an incentive for vessels to use larger mesh to fish for small mesh multispecies. Allowance of several mesh sizes accounts for differences in the characteristics of the various small mesh fisheries (such as squid and herring) which exist.

Amendment 12 proposes to allow vessels using mesh less than 2.5 in (6.35 cm) to use net strengtheners. This provision allows vessels which have traditionally used net strengtheners in other small mesh fisheries to continue with their use while maintaining the expected conservation benefits by prohibiting the use of net strengtheners in directed small mesh multispecies fisheries.

On May 1, 2002 (the beginning of year 4 under the schedule proposed by Amendment 12), if target mortality and biomass objectives have not been achieved and if the Council and NMFS have not implemented other adequate management measures, default measures would ensure that the fishing mortality objectives of Amendment 12 are achieved. The default measures would include the following:

A regulated mesh area to be defined prior to the effective date of the default measure, with a 3–in (7.62 cm) minimum mesh requirement for all fishing activities (with the exception of fisheries with larger minimum mesh sizes). In the absence of a defined small mesh multispecies regulated mesh area, the default measures would be effective throughout the range of the species. Vessels participating in any fishery would be required to use the minimum mesh or larger unless fishing in a fishery that has been determined exempt from the minimum mesh size.

A possession limit of whiting and offshore hake up to 10,000 lb (4,536 kg) for vessels possessing a Federal multispecies permit would be allowed.

A possession limit of 100 lb (45.36 kg) of whiting and offshore hake for vessels participating in an exempted fishery would be allowed.

A provision to allow a vessel to fish with mesh less than 3 in (7.62 cm), if fishing is determined to be exempted from the minimum mesh size by demonstrating a bycatch of small mesh multispecies that is less than 10 percent of total catch.

Analysis of these management measures indicated that it may be very difficult to achieve the conservation objectives of the proposed amendment without decreasing the amount of whiting retained or discarded with mesh less than 2.5 in (6.35 cm). Therefore, the default measures described above further increase the likelihood that the incidental, as well as the directed, catch of small mesh multispecies will be reduced.

Additional measures that can be implemented through the framework procedure have been proposed under Amendment 12 to allow future adjustments for the small mesh multispecies. The following measures that can be implemented through the framework procedure have been proposed: A total allowable landings limit (and appropriate seasonal adjustments) for vessels fishing in the northern area requiring that the fishery be closed when the limit is reached; modifications or adjustments to whiting

grate/mesh configuration requirements; adjustments to whiting stock boundaries for management purposes; modifications to requirements for fisheries to be exempt from the minimum mesh requirements for small mesh multispecies; and season adjustments, declarations and participation requirements for the Cultivator Shoal Whiting Fishery. Amendment 12 also proposes the following management measures that could be implemented through a framework adjustment to the FMP provided that they are accompanied by a full set of public hearings: A whiting Days at Sea (DAS) effort reduction program and a whiting total allowable catch (TAC), either by region or for the entire fishery. In addition, Amendment 11 to the FMP, which was approved on March 3, 1999, adds essential fish habitat measures to the framework list. The framework procedure for essential fish habitat, which was inadvertently not included in regulations at the time Amendment 11 to the FMP was approved, is now included in this rule.

The framework adjustment process allows the Council flexibility to develop and analyze management actions over a shorter time period than is possible under the amendment process. Framework development still involves notification of proposed measures to the public and opportunities for public comment.

Amendment 12 proposes to establish the Whiting Monitoring Committee (WMC) to monitor the progress of the rebuilding of small mesh multispecies stocks on an annual basis. The role, structure, and process for the WMC would be identical to the Multispecies Monitoring Committee (MMC), with the exception that the WMC would contain at least three industry representatives: At least one from New England, one from Southern New England, and one from the Mid-Atlantic regions. Establishment of a monitoring committee provides regular, consistent evaluation of the management measures to ensure that the goals of the Northeast Multispecies FMP specific to small mesh multispecies are achieved.

This rule proposes to correct references to the appeals paragraphs of the multispecies permitting section and to clarify the net strengthener provision at § 648.80(g).

Classification

The Council prepared and NMFS has adopted a SEIS for this amendment; a notice of availability was published at 63 FR 48727, September 11, 1998. Although short-term negative impacts would result from lowered allowed catches of small mesh multispecies, the proposed management action would have long-term positive impacts on affected physical, biological, and human environments. A copy of the SEIS may be obtained from the Council (see **ADDRESSES**).

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

Initial Regulatory Flexibility Analysis

The Council prepared an IRFA for this proposed rule, pursuant to the Regulatory Flexibility Act (5 U.S.C. 603), without a final determination as to whether the proposal would have a significant impact on a substantial number of small entities. In September of 1997, NMFS determined that some stocks of whiting and red hake are overfished or approaching an overfished condition. This proposed rule is published to comply with the new requirements of the Magnuson-Stevens Act which requires that a management plan be developed and implemented to end overfishing and to rebuild overfished stocks. This proposed rule intends to end overfishing by implementing whiting, offshore hake, and red hake possession limits; minimum mesh sizes; and a year 4 default measure to ensure that the elimination of overfishing is attained. To ensure that there will be effective recordkeeping and compliance for the proposed measures, this proposed rule would establish two new collection-of-information requirements and include one collection-of-information requirement that was previously omitted. These two new requirements consist of a requirement for a vessel owner or operator to call the Regional Administrator to request a letter of authorization to fish under one of the mesh size/possession limit categories and of a requirement to make a receipt for fish bought through a transfer of fish at sea. The omitted requirement is a requirement to call in to receive a letter of authorization to transfer fish other than regulated multispecies at sea. Measures analyzed in the IRFA include the full set of management measures with particular attention to mesh size and possession limits and the year 4 default measure. The small entities considered in this analysis are 1,156 vessels whose reported landing was made of one or more combined pounds of whiting, red hake, and offshore hake during the calendar years 1995 to 1997. The following is a brief discussion of the measures and alternatives analyzed in the IRFA.

Measures proposed in this amendment are intended to reduce landings of whiting and red hake and to control effort on these fisheries. Vessels that would continue fishing for small mesh multispecies would be subject to substantial reductions in landings from their historical fishing activity. The most significant effects would be caused by the 4th year default measures, which are expected to result in the largest economic loss for fishery participants. The management measures for years 1–3 are estimated to reduce gross revenues from all species by more than 5 percent for 81 vessels (7 percent of small mesh multispecies participants). If the default measure is implemented, approximately 20 percent of small mesh multispecies fishery participants (222 vessels) are estimated to experience a reduction in annual gross revenues of 5 percent or more.

Additionally, short- and long-run profitability analyses of small mesh multispecies commercial fishing vessels indicate that management measures proposed in this amendment would force some vessels to cease operations. In the short run, vessels may be assumed to maintain business operations, provided operating costs can be paid. In the long run, vessels may be able to maintain business operations only if all costs (fixed and operating) can be paid from gross receipts. Estimated profitability for the years 1–3 and year 4 default management measures indicated that two percent, or more, of the vessels may not be able to operate at positive long-run profit upon implementation of the FMP by this proposed rule. Under the years 1–3 measures, a total of 25 vessels estimated to be earning positive profit under the status quo, (2.2 percent of all small mesh multispecies fishery participants) would be operating at negative profit. Similarly, a total of 61 vessels estimated to be earning positive profit under the status quo (5.3 percent of all small mesh multispecies fishery participants) would be operating at negative profit under the year 4 default measure. It is assumed such vessels would cease operations as a result of their negative profit.

The impact of the proposed action would not be distributed evenly among vessels or sectors of the industry. Impacts of the proposed management action would be the greatest on the communities that depend most heavily on small mesh multispecies fisheries. Most of the effort in the small mesh fisheries and resulting landings are from vessels based in Rhode Island, New York, and New Jersey. Therefore, with management measures designed to reduce effort and landings, vessels fishing from these states would experience the effects of the

management measures to the greatest extent. Compared to the status quo, however, industry may realize much greater benefits in the long term as stocks of small mesh species recover, and value of the species increases as a result of the proposed management measures.

An analysis of the management measures in an open access fishery was also conducted. Although it is likely that current numbers of vessels permitted to fish for small mesh multispecies would remain at current levels or slightly increase, it is uncertain what the actual level of participation, effort and catch levels will result. However, vessels that would have qualified for the limited access permits would remain subject to greater restrictions and therefore would be equally impacted under a limited access or open access fishery. Vessels that would have been excluded from the limited access fishery would likely recognize greater profitability as a result of an open access system over the short-term. Therefore, because the open access fishery would result in increased profitability for some small entities when compared to the limited access permit program, NMFS determines that the management measures in an open access system would have a reduced negative impact on small entities.

Other measures proposed in this amendment, including minimum mesh and possession limit enrollment programs (not including the direct reductions of catch and landings caused by minimum mesh sizes and possession limits), codend specifications, the net strengthener provision, and the transfer at sea provision have no quantifiable economic impact. However, these measures are expected to have minimal economic impact on participating vessels because they would not result in the loss of catch or landings and would allow continued flexibility.

Alternatives Considered But Rejected by the Council

1. The Council considered a ''no action'' alternative that would result in no changes to the current measures under the Northeast Multispecies FMP. The no action alternative was rejected because it would not fulfill the requirements of the Sustainable Fisheries Act with respect to overfished stocks. Further, evaluations of biological, social, and economic impacts suggest that the proposed management measures would result in greater, long-term benefits to the industry.

2. The Council considered various management measures specific to northern, southern, and the Cultivator Shoal Whiting Fishery areas, using the boundary between the Gulf of Maine/Georges Bank and the Southern New England Regulated Mesh Areas to differentiate between the northern and southern areas. Management measures that were considered included minimum mesh sizes, eastern and western zone delineation in the southern area, and possession limits based on mesh size, areas fished, seasons, and vessel size. While the Council maintained the Cultivator Shoal Whiting Fishery exemption area, it rejected further delineation because it felt that area-specific measures would be unnecessary with simplified and uniform management measures for all areas, except the Cultivator Shoal Whiting exemption area.

3. Seasonal restrictions, including a reduction of the current season, were considered by the Council for management measures for the Cultivator Shoal Whiting Fishery. The Council had considered reducing the season of the fishery by 2 months by eliminating June and October from the allowed season. In addition, various possession limits and participation restrictions were considered. While Amendment 12 proposes a 1-month reduction of the season that eliminates the month of October, the elimination of the June portion was rejected. Public comment during the public hearing stage suggested that landings from the fishery in June are of high value because of the lack of other available fish or allowed whiting fisheries. The possession limits and other restrictions, other than the proposed measures in this rule, were rejected for consideration in Amendment 12 because they were too complex or not feasible. The Council felt that, while the low possession limits would ensure that fishing mortality goals relative to the Cultivator Shoal area would be reached quickly, vessels would not be able to profit from trips to the Cultivator Shoal area with low possession limits.

4. The Council considered three options for possible transfers of small mesh multispecies at sea. One measure would prohibit transfers; a second would allow unlimited transfers; and a third would allow vessels to transfer limited amounts of small mesh multispecies. The Council rejected the prohibition of transfers because it would not allow the needed flexibility in the industry. The unlimited transfer at sea option was also rejected because it would compromise the effectiveness of the possession limits it was developing.

5. The Council considered implementing minimum fish sizes for whiting, but rejected the idea due to the likelihood that measuring whiting would be impractical and difficult to enforce given the high-volume nature of the fishery and that whiting is a highly perishable product.

6. The Council considered spawning season closures to protect spawning stocks of whiting and red hake, but rejected the measure because spawning data for whiting are incomplete. The data that are available suggest that existing large mesh measures in the Northeast Multispecies FMP provide protection for known spawning fish.

NMFS seeks comments regarding the IRFA. Copies of the IRFA are available from the Council (see **ADDRESSES**).

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This proposed rule contains three new collection-of-information requirements subject to the Paperwork Reduction Act and have been submitted to OMB for approval. This proposed rule also repeats an existing requirement that has been approved by OMB under control number 0648–0202. The public reporting burden for these collection-of-information requirements is indicated in the parentheses in the following statements and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding whether the proposed collection-of-information requirements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; 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, including the use of automated collection techniques or other forms of information technology. Send comments regarding these reporting burden estimates or any other aspects of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The new requirements are:

Call-in to NMFS Region for Enrollments for Authorization Letter to Transfer at Sea, (2 minutes/response);

Written Receipt for At-Sea Transfers of Small mesh Multispecies, (1 minute/ response);

Call-in to NMFS Region for Enrollments for Mesh Size/ Possession Limit Authorization Letter, (2 minutes/ response).

The repeated existing requirement is:

Call in to NMFS Region for Enrollment for the Cultivator Shoal Whiting Fishery Authorization Letter, (2 minutes/response).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 1, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648–FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition for ''Nonregulated multispecies'' is removed, the definitions for ''Dealer'' and ''Northeast (NE) multispecies or multispecies'' are revised, and the definitions for ''Small mesh multispecies'' and ''Whiting Monitoring Committee (WMC)'' are added to read as follows:

§ 648.2 Definitions.

* * * * *

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part, unless otherwise exempted in this part.

* * * * *

Northeast (NE) multispecies or *multispecies* means the following species:

American plaice- *Hippoglossoides platessoides*.

Atlantic cod- *Gadus morhua*.

Haddock- *Melanogrammus aeglefinus*.

Ocean Pout- *Macrozoarces americanus*.

Offshore Hake- *Merluccius albidus*.

Pollock- *Pollachius virens*.

Redfish- *Sebastes fasciatus*.

Red hake- *Urophycis chuss*.

Silver hake (whiting)- *Merluccius bilinearis*.

White hake- *Urophycis tenuis*.

Windowpane flounder- *Scophthalmus aquosus*.

Winter flounder- *Pleuronectes americanus*.

Witch flounder- *Glyptocephalus cynoglossus*.

Yellowtail flounder- *Limanda ferruginea*.

* * * * *

Small mesh multispecies means the subset of Northeast multispecies that includes silver hake, offshore hake, and red hake.

* * * * *

Whiting Monitoring Committee (WMC) means a team appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures addressing small mesh multispecies. The team consists of staff from the NEFMC and MAFMC, NMFS Northeast Regional Office, the NEFSC, the USCG, at least one industry representative from each geographical area (northern New England, southern New England, and the Mid-Atlantic), and no more than two representatives, appointed by the Commission, from affected states.

3. In § 648.4, paragraph (a)(1)(ii) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(1) * * *

(ii) *Open access permits.* A vessel of the United States that has not been issued a limited access multispecies permit is eligible for and may be issued an ''open access multispecies'', ''handgear'', or ''charter/party'' permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

* * * * *

4. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, sea scallop, summer flounder, surf clam and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species. As of January 1, 1997, all mackerel, squid, and butterfish dealers and all scup dealers, and, as of June 1, 1997, all black sea bass dealers must have been issued under this section, and have in their possession, a valid permit for these species. As of [*insert the date the final rule is effective*], persons on board vessels receiving small mesh multispecies at sea for use exclusively as bait are deemed not to be dealers for purposes of receiving such small mesh multispecies and are not required to possess a valid dealer's permit under this section, provided the vessel complies with the provisions specified under § 648.13.

* * * * *

5. In § 648.13, paragraph (b) is revised and paragraph (e) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a Federal multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Administrator to do so, may transfer species other than regulated species from one vessel to another vessel.

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer only up to 500 lb (226.8 kg) of combined small mesh multispecies per trip for use as bait from one vessel to another, provided:

(i) The transferring vessel possesses a Federal multispecies permit as specified under § 648.4(a)(1);

(ii) The transferring vessel has a letter of authorization issued by the Regional Administrator on board; and

(iii) The receiving vessel possesses a written receipt for any small mesh multispecies purchased at sea.

* * * * *

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small mesh multispecies at sea for use as bait will automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under § 648.86(c), for every trip during the participation period specified on the letter of authorization, regardless of whether or not a transfer of small mesh multispecies at sea occurred or whether or not the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction will be noted on the

transferring vessel's letter of authorization from the Regional Administrator.

* * * * *

6. In § 648.14, paragraphs (a)(42), (a)(43), (b), (c) introductory text, (c)(7) and (t) are revised, and paragraphs (x)(4)(iii) and (z) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(42) Fish within the areas described in § 648.80(a)(4) with nets of mesh smaller than the minimum size specified in § 648.80(a)(2) or § 648.80(a)(4)(i)(B), and unless the vessel is issued and possesses on board an authorizing letter issued under § 648.80(a)(4)(i).

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(3), the small mesh Northern shrimp fishery exemption area; (a)(4), the Cultivator Shoals whiting fishery exemption area; (a)(8), Small Mesh Area 1/Small Mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any of these paragraphs in § 648.80 is a separate violation.

* * * * *

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under § 648.4(a)(1)(i)(M)(*3*), to land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a),(b) and (c) or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit or a letter under § 648.4(a)(1)(i)(M)(*3*), unless otherwise specified in § 648.17 to do any of the following:

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d) and under § 648.82(b)(3), if the vessel has been issued a limited access multispecies permit.

* * * * *

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any person owning or operating a vessel issued an open access multispecies permit to possess or land any regulated species as defined in § 648.2, or to violate any applicable provisions of § 648.88, unless otherwise specified in § 648.17.

* * * * *

(x) * * *

(4) * * *

(iii) All small mesh multispecies retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

* * * * *

(z) *Small mesh multispecies.* (1) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, and subject to paragraph (a)(32) of this section it is unlawful for any person owning or operating a vessel issued a Federal multispecies permit to land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, small mesh multispecies from one vessel to another in excess of the limits specified in § 648.13, unless both vessels fish exclusively in state waters and neither vessel has been issued a multispecies permit.

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, beginning May 1, 2002, it is unlawful for any vessel to do any of the following:

(i) Fish with, use or have available for immediate use within the areas described in §§ 648.80(a), (b) and (c), nets of mesh whose size is smaller than 3–in (7.62–cm), unless otherwise exempted pursuant to § 648.80(a)(7) or unless the vessel has not been issued a permit under § 648.4 and fishes exclusively in state waters.

(ii) If issued a Federal multispecies permit, land, or possess on board a vessel, more than 10,000 lb (4,536 kg) of combined whiting and offshore hake.

7. In § 648.80, paragraphs (a)(3)(i), (a)(4)(i)(A) through (a)(4)(i)(D), (a)(7), (a)(8)(i), (a)(9)(i)(D), (b)(3)(i), (c)(4), (g)(1) and (g)(2)(i) are revised, and (a)(4)(i)(E) through (a)(4)(i)(G), and (g)(4) are added to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* (A) Until May 1, 2002, a vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(B) Beginning May 1, 2002, a vessel fishing for Northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to 100 lb (45.36 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

* * * * *

(4) * * *

(i) * * *

(A) A vessel fishing in the Cultivator Shoal Whiting Fishery under this exemption must have a letter of authorization issued by the Regional Administrator on board and is subject to the following:

(B) Until May 1, 2002, a vessel participating in this fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by

weight, of all other species on board or 200 lobsters, whichever is less.

(C) Beginning May 1, 2002, a vessel fishing in the Cultivator Shoal Whiting Fishery is subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(4)(i)(B) of this section.

(D) All nets must comply with a minimum mesh size of 3 in (7.62 cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) counted from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) counted from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

(E) Fishing is confined to a season of June 15 through September 30, unless otherwise specified by notification in the **Federal Register**.

(F) When transiting through the GOM/GB Regulated Mesh Area specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small mesh multispecies under another exempted fishery specified in paragraph (a) of this section during the course of the trip.

(G) A vessel participating in the Cultivator Shoal Fishery may fish for small mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section for the entire trip.

* * * * *

(7) *Addition or deletion of exemptions*—(i)(A) *Regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(B) *Small mesh multispecies.* Beginning May 1, 2002, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of small mesh multispecies. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species or small mesh multispecies.

(8) * * *

(i)(A) Unless otherwise prohibited in § 648.81, until May 1, 2002, a vessel subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(3)(ii) or (a)(8)(iv) of this section from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2. A vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake, butterfish, dogfish, herring, mackerel, ocean pout, scup, squid and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2002, in addition to the requirements specified in paragraph (a)(8)(i)(A) of this section, vessels are subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg), butterfish, dogfish, herring, mackerel, ocean pout, scup, squid and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(C) Small mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

Small Mesh Area 1		
Point	N. lat.	W. long.
SM1	43°03’	70°27’
SM2	42°57’	70°22’
SM3	42°47’	70°32’
SM4	42°45’	70°29’
SM5	42°43’	70°32’

Small Mesh Area 1		
Point	N. lat.	W. long.
SM6	42°44'	70°39'
SM7	42°49'	70°43'
SM8	42°50'	70°41'
SM9	42°53'	70°43'
SM10	42°55'	70°40'
SM11	42°59'	70°32'
SM1	43°03'	70°27'
Small Mesh Area 2		
Point	N. lat.	W. long.
SM13	43°05.6'	69°55.0'
SM14	43°10.1'	69°43.3'
SM15	42°49.5'	69°40.0'
SM16	42°41.5'	69°40.0'
SM17	42°36.6'	69°55.0'
SM13	43°05.6'	69°55.0'

* * * * *

(9) * * *

(i) * * *

(D)(*1*) Until May 1, 2002, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.72 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(*2*) Beginning May 1, 2002, vessels are subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may retain the allowable incidental species listed in paragraph (a)(9)(i)(D)(*1*) of this section.

* * * * *

(b) * * *

(3) * * *

(i) *Species exemptions.* (A) Until May 1, 2002, vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(c).

(B) Beginning May 1, 2002, vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 in (7.62 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake - up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (a)(4)(i)(D) and (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86.

* * * * *

(c) * * *

(4) *Addition or deletion of exemptions.* Same as paragraph (a)(7) of this section.

* * * * *

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* Except as provided in paragraph (g)(4) of this section, a fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net subject to minimum mesh size restrictions except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) * * * (i) Except as provided in paragraph (g)(4) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

* * * * *

(4) Net strengthener restrictions when fishing for small mesh multispecies. A vessel fishing for small mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets of mesh size smaller than 2.5–in (6.35–cm) may use a net strengthener provided that the net strengthener complies with the provisions specified under § 648.23(d).

* * * * *

8. In § 648.86, paragraphs (c) and (d) are redesignated as paragraphs (e) and (f) respectively and new paragraphs (c) and (d) are added to read as follows:

§ 648.86 Possession restrictions.

* * * * *

(c) *Small mesh multispecies until May 1, 2002.* (1) Vessels issued a valid Federal multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small mesh multispecies:

(i) Mesh size smaller than 2.5 in (6.35 cm) and vessels without a letter of authorization. Vessels fishing for, in possession of, or landing small mesh multispecies with nets, or with nets on board that have not been properly stowed, of mesh size smaller than 2.5 in (6.35 cm), and, vessels which have not been issued a letter of authorization pursuant to paragraph (c)(1)(ii) or (c)(1)(iii) of this section may possess on board and land up to only 3,500 lb (1,588 kg) of combined silver hake and offshore hake. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) Mesh size 2.5 in (6.35 cm) or greater. Vessels fishing for, in possession of, or landing small mesh multispecies may possess on board and land up to only 7,500 lb (3,402 kg) of combined silver hake and offshore hake when fishing with nets with a minimum mesh size of 2.5 in (6.35 cm) provided the vessel has a letter of authorization issued by the Regional Administrator as described in paragraph (c)(2) of this section requiring mesh size of at least 2.5 in (6.35 cm) to be used and provided that any nets of mesh size smaller than 2.5 in (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.81(e). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) Mesh size of 3 in (7.62 cm) or greater. Vessels fishing for, in possession of, or landing small mesh multispecies may possess on board and land up to only 30,000 lb (13,608 kg) of

combined silver hake and offshore hake when fishing with nets with a minimum mesh size of 3 in (7.62 cm) provided the vessel has a letter of authorization issued by the Regional Administrator as described in paragraph (c)(2) of this section requiring mesh size of at least 3 in (7.62 cm) to be used and provided that any nets of mesh size smaller than 3 in (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.81(e). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(2) *Letter of authorization*. Vessels fishing pursuant to paragraphs (c)(1)(ii) or (c)(1)(iii) of this section must carry a letter of authorization to fish in the minimum mesh size/possession limit category on board the vessel. To request a letter of authorization, vessel owners must call the Northeast Region Permit Office during normal business hours and provide the vessel name, owner name, permit number, the desired mesh size/possession limit category and the period of time that the vessel would be enrolled. Since letters of authorization would be effective on the date of receipt, vessel owners should allow appropriate processing and mail time. Enrollment must be a minimum of 30 days. To withdraw from a category, vessel owners must call the Northeast Region Permit Office. Withdrawals would be effective upon date of request. Withdrawals may occur after a minimum of 7 days of enrollment in which case vessel owners may not re-enroll the vessel in any mesh size/ possession limit category until 30 days from the original enrollment period have passed and are subject to a silver hake and offshore hake possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use. For example, if a vessel owner enrolls in the 3–in (7.62 cm) mesh/30,000 (13,608 kg) lb possession limit category which is effective October 1 and chooses November 30 as the end date but withdraws on October 7 and enrolls in the possession limit category, the vessel may not be re-enrolled in the 2.5–in (6.35 cm)/ 7,500 lbs (3,402 kg) or 3–in mesh/30,000 lb (13,608 kg) possession limit category until October 31.

(3) *Possession limit for vessels participating in the Northern shrimp fishery*. Vessels participating in the Small mesh Northern Shrimp Fishery exemption, as described in § 648.80(a)(3) and issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(4) *Possession restriction for vessels electing to transfer small mesh multispecies at sea*. Vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small mesh multispecies at sea according to the provisions specified in § 648.13(b) will be subject to a combined silver hake and offshore hake possession limit which is 500 lb (226.8 kg) less than the possession limit the vessel would otherwise receive. This deduction will be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(d) *Small mesh multispecies beginning on May 1, 2002*—(1) *Federal multispecies permit holders*. A vessel issued a valid Federal multispecies permit specified under § 648.4 (a)(1) may possess on board and land up to 10,000 lb (4,536 kg) of combined silver hake and offshore hake. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(2) *Possession limit for vessels participating in the Northern shrimp fishery*. Vessels participating in the Small Mesh Northern Shrimp Fishery exemption, as described in § 648.80(a)(3) and issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and land silver hake and offshore hake, combined, up to 100 lb (45.36 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small mesh multispecies at sea*. Vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small mesh multispecies at sea according to the provisions specified in § 648.13(b) will be subject to a combined silver hake and offshore hake possession limit which is 500 lb (226.9 kg) less than the possession limit the vessel would otherwise receive. This deduction will be noted on the transferring vessel's letter of authorization from the Regional Administrator.

* * * * *

9. In § 648.90, paragraphs (a) introductory text, (a)(1) through (a)(4), and (b)(1) are revised to read as follows:

§ 648.90 Framework specifications.

(a) *Annual review*. The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and to develop options for NEFMC consideration on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the NE Multispecies FMP goals and objectives. For the year 2000 and thereafter, the MMC and the Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for NEFMC consideration on any changes, adjustments, or on additions to DAS allocations, if applicable, closed areas or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC and WMC, as applicable, shall separately review available data pertaining to: Catch and landings, discards, DAS, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small mesh multispecies, which may include a preferred option. The MSMC and WMC must demonstrate through analyses and documentation that the options they develop are expected to meet the NE Multispecies FMP goals and objectives. The MSMC and WMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC or WMC may include any of the management measures in the NE Multispecies FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the NE Multispecies FMP for the 10 regulated species or small mesh multispecies; DAS changes; possession limits; gear

restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH; and any other management measures currently included in the NE Multispecies FMP. In addition, for the 2002 fishing year, the WMC must consider, and recommend as appropriate, management options other than the default measures for small mesh multispecies management (mesh and possession limit restrictions for small mesh multispecies beginning May 1, 2002).

(3) The NEFMC shall review the recommended target TACs recommended by the MSMC and all of the options developed by the MSMC and WMC, and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective pertaining to regulated species or small mesh multispecies that is consistent with other applicable law. If the NEFMC does not submit a recommendation that meets the NE Multispecies FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MSMC or WMC, unless rejected by the NEFMC, as specified in paragraph (a)(6) of this section, provided the option meets the NE Multispecies FMP objectives and is consistent with other applicable law.

(4) Based on this review, the NEFMC shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations (if applicable), closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. Included in the NEFMC's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

* * * * *

(b) * * * (1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small mesh multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small mesh multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small mesh multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area

(ii) *Adjustment process for Whiting TACs and DAS.* The Council may develop recommendations for a Whiting DAS effort reduction program or a Whiting TAC through the framework process outlined in paragraph (c)(1) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

* * * * *

[FR Doc. 99–23488 Filed 9–10–99; 8:45 am]
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Notices

Federal Register

Vol. 64, No. 176

Monday, September 13, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV99–944–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for specified exempt import commodities.

DATES: Comments on this notice must be received by November 12, 1999.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S., P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: moabdocket__clerk@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Specified Commodities Imported into the United States Exempt from Import Requirements.

OMB Number: 0581–0167.

Expiration Date of Approval: May 31, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Section 8e of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect. Currently, the following commodities are subject to Section 8e import regulations: avocados, dates (other than dates for processing), hazelnuts, grapefruit, table grapes, kiwifruit, limes, olives (other than Spanish-style olives) onions, oranges, Irish potatoes, prunes, raisins, tomatoes, and walnuts. However, imports of these commodities are exempt from such requirements if they are imported for such outlets as processing, charity, animal feed, seed, and distribution to relief agencies, when those outlets are exempt under the applicable marketing order.

Safeguard procedures in the form of importer and receiver reporting requirements are used to ensure that the imported commodity is provided to authorized exempt outlets. The safeguard procedures are similar to the reports currently required by most domestic marketing orders. The import regulations require importers and receivers of imported fruit, vegetable, and specialty crops to submit a form, as provided in sections 944.350, 980.501, and 999.500.

An importer wishing to import commodities for exempt purposes must complete, prior to importation, an Importer's Exempt Commodity Form (FV–6), which is a four-part form. Copy one is presented to the U.S. Customs Service. The importer files copy two with the Marketing Order Administration Branch (MOAB) of the Fruit and Vegetable Programs, AMS, within two days after the commodity enters the United States. The third copy of the form accompanies the exempt shipment to its intended destination. The receiver certifies that the commodity has been received and that it will be utilized for authorized exempt purposes. The receiver then files copy three with MOAB, within two days after receiving the commodity. The fourth copy is retained by the importer.

The Department of Agriculture (Department) utilizes this information to ensure that imported goods destined for exempt outlets are given no less favorable treatment than that afforded to domestic goods destined for such exempt outlets. These exemptions are consistent with Section 8e import regulations under the Act.

This form requires the minimum amount of information necessary to effectively carry out the requirements of the Act, and its use is necessary to fulfill the intent of the Act, and to administer Section 8e compliance activities.

In addition, included in this extension and revision of a currently approved information collection is another form titled, ''Civil Penalty Stipulation Agreement'' (FV–7). This form provides AMS with an additional tool to obtain resolution of certain cases under the AMAA without the cost of going to a hearing. Stipulation agreements may be appropriate for, but not limited to, instances of minor violations of a marketing order or marketing agreement or section 8e of the AMAA. However, AMS is not under any obligation to issue stipulation agreements. The only requirement for this form is a signature, therefore, there is no burden on the person if they agree to the Agreement and return it.

The information collected is used primarily by authorized representatives of the Department, including AMS, Fruit and Vegetable Programs' regional and headquarters staff. AMS is the primary user of the information.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .1698 hours per response.

Respondents: Importers and receivers of exempt commodities.

Estimated Number of Respondents: 1,920.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 1,632 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or

other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0167 and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090-6456; Fax (202) 720–5698; or E-mail: moabdocket—clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., S.W., Washington, D.C., room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed: September 7, 1999

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs

[FR Doc. 99–23790 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–02–p

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Notice and Request for Public Comment on the Watermelon Pilot Crop Insurance Program

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice with request for comments.

SUMMARY: This notice announces that the Federal Crop Insurance Corporation (FCIC) is hereby suspending the current watermelon pilot crop insurance program for the 2000 crop year. FCIC will continue to work with producers, industry representatives, and others to develop a revised watermelon insurance program that may better meet the needs of producers. The intended effect of this action is to advise all interested parties of FCIC's suspension of the current watermelon program for the 2000 crop year and to solicit comments regarding a revised watermelon pilot crop insurance program.

DATES: Written comments and opinions on suggested improvements for the insurance of watermelons will be accepted until close of business November 12, 1999.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Research and Evaluation Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments may also be sent via the Internet to DIRECTORPDD@RM.FCIC.USDA.GOV. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Tiefel, Insurance Management Specialist, Research and Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–6343.

SUPPLEMENTARY INFORMATION: The current watermelon pilot crop insurance program was implemented for the 1999 crop year in the following fifteen counties in eight States: Geneva County in Alabama; Sussex County in Delaware; Alachua, Jackson, and Manatee Counties in Florida; Crisp, Tift, Turner, and Worth Counties in Georgia; Wicomico County in Maryland; Chowan and Sampson Counties in North Carolina; and Duval, Frio, and Hidalgo Counties in Texas. The selected pilot program counties accounted for approximately 19 percent of the national watermelon planted acreage. The pilot program utilized an actual production history (APH) plan of insurance. As a result of complaints received regarding the watermelon pilot crop insurance program concerning excess watermelon production and determination of market prices, FCIC is suspending the current program for the 2000 crop year. FCIC will continue to work with producers, industry representatives, and others to develop a watermelon insurance program that may better meet the needs of producers.

Notice

FCIC is hereby suspending the current watermelon pilot crop insurance program for the 2000 crop year. Producers with existing watermelon policies will have those policies canceled by the cancellation date in accordance with the terms of the policy. FCIC will continue to work with producers, industry representatives, and others to develop a watermelon insurance program that may better meet the needs of producers. Plans of insurance other than the APH plan will be considered. FCIC is soliciting comments regarding a revised watermelon pilot crop insurance program.

Authority: 7 U.S.C. 1506(l), 1506(p).

Signed in Washington, DC, on September 7, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–23795 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in NCRS National Handbook of Conservation Practices for Review and Comment

AGENCY: Natural Resources Conservation Service (NRCS), DOA.

ACTION: Notice of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include Closure of Waste Impoundments, Conservation Cover, Contour Farming, Cover Crop, Contour Stripcropping, Grassed Waterway, and Irrigation System—Microirrigation. NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

EFFECTIVE DATES: Comments will be received on or before November 12, 1999. This series of new or revised conservation practice standards will be adopted after the close of the 60-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS-CED in Washington, DC. Submit individual inquiries and return any comments in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890. Telephone Number 202–720–5023. The standards are also available and can be downloaded from the Internet at: http://www.ftw.nrcs.usda.gov/practice__stds.html.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed

revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, D.C.

[FR Doc. 99–23673 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Brazos Electric Power Cooperative, Inc.; Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an Environmental Assessment with respect to the potential environmental impacts related to the construction and operation of the Lewisville 345/138 kV Switching Station in the City of Lewisville, Texas. The project is proposed by Brazos Electric Power Cooperative, Inc. (Brazos), of Waco, Texas. RUS may provide financing assistance for the project.

FOR FUTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1953 or e-mail: *drankin@rus.usda.gov.*; or David McDaniel, Brazos, PO Box 2585, Waco, Texas 76702–2585, telephone: (254) 750–6324 or e-mail: dmcdaniel@brazoselectric.com.

SUPPLEMENTARY INFORMATION: Brazos is planning to construct an 8–10 acre 345/138 kV switching station in Denton County, Texas. The proposed site is located in the vicinity of the northwest corner of North Mill Street and Jones Street in the City of Lewisville. Existing transmission facilities are located in the immediate area.

An environmental report (ER) which describes the project further and discusses the environmental impacts of the proposed project was prepared by Brazos. RUS has conducted an independent evaluation of the ER and believes that it accurately assesses the impacts of the proposed project. No adverse impacts are expected with the construction of the project. RUS has reviewed and accepted the document as its Environmental Assessment and is making it available for public review.

The EA can be reviewed at the address provided above or at the following locations:

Brazos Electric Power Cooperative, Inc., 2404 LaSalle Avenue, Waco, Texas 76702–2585, Telephone: (254) 750–6324

CoServ, 3501 FM 2181, Corinth, Texas 76205–3741, Telephone: (940) 321–4640

Lewisville Public Library, 1197 West Main Street, Lewisville, Texas 75067–3425, Telephone: (972) 219–3570

Questions and comments should be sent to RUS at the address provided. RUS should receive comments on the Environmental Assessment in writing by October 15, 1999, to ensure that the comments are taken into consideration prior to RUS making its environmental determination.

Dated: September 2, 1999.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 99–23793 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–15–P

APPLACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

Time and Date: 9:00 a.m.—12:00 p.m. October 20, 1999

Place: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

Status: Most of the meeting will be open to the public. An executive session closed to the public will be held about 9:15 a.m. to 10:00 a.m.

Matters to be Considered:

Portions Open to the Public: The primary purpose of this meeting is to (1) Review the independent auditors' report of the Commissions' financial statement for fiscal year 1998–1999; (2) Review the Commission's annual reports for fiscal years 1997–1998 and 1998–1999; (3) Consider a proposed budget for fiscal year 2000–2001; (4) Review the project reports for the low-level radioactive waste (LLRW) disposal facility siting process in Pennsylvania; (5) Review the status of siting efforts in other states and compacts; (6) Review and discuss the General Accounting Office's (GAO) report on management and disposal of LLRW; and (7) Discuss renewal of Commission's investment agreement with the Pennsylvania Office of the Treasurer.

Portions Closed to the Public: Executive Session from about 9:15 a.m. to 10:00 a.m. to discuss personal matter

Contact person for more information: Richard R. Janati, Chairman Seif's Staff Member on the Commission, at 717–787–2163.

Richard R. Janati,

Chairman's Staff Member on the Commission.

[FR Doc. 99–23681 Filed 9–10–99; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–99]

Foreign-Trade Zone 27—Boston, MA; Application for Subzone, J. Baker, Inc. (Distribution of Apparel, Footwear and Accessories), Canton, MA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Massachusetts Port Authority (Boston, MA), grantee of FTZ 27, requesting special-purpose subzone status for the apparel, footwear and accessories warehousing/distribution facilities of J. Baker, Inc., located in Canton, MA, some 22 miles south of Boston. 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 September 7, 1999.

The Baker facilities are located at 330 Turnpike Street (750,000 sq. ft. on 30.7 acres) and 555 Turnpike Street (45,850 sq. ft. on 4.16 acres). There are 800 employees at the two facilities. The facilities are used for storage, inspection, finishing, packaging and distribution of a wide variety of apparel, footwear and accessories such as neckties, belts, hosiery, gloves and novelty items. About 65 percent of the products are sourced from abroad and over 5 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 Baker 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 the plant. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed 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 the address below. The closing period for their receipt is November 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 29, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 164 Northern Avenue, World Trade Center, Suite 307, Boston, MA 02210

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: September 7, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–23774 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–99]

Foreign-Trade Zone 49—Newark/Elizabeth, NJ; Application for Subzone, Firmenich, Inc. (Flavor and Fragrance Products) Plainsboro and Port Newark, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, Newark/Elizabeth, NJ, requesting special-purpose subzone status for the flavor and fragrance manufacturing facilities of Firmenich, Inc., located in Plainsboro and Port Newark, New Jersey. 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 September 1, 1999.

The Firmenich, Inc. facilities are located at 250 Plainsboro Road (384,220 sq. ft. on 58 acres, 575 employees), Plainsboro and at 150 Firmenich Way (833,041 sq. ft. on 19 acres, 129 employees), Port Newark. The facilities are used to produce a variety of flavor and fragrance products, which are used in perfumes, cosmetics, soaps, detergents, personal care products, prepared foods, soft drinks, dairy foods, pharmaceuticals, dietary foods and confectionary products. Most of the finished products are categorized as flavor and fragrance products (duty rate—zero). The products are blended from numerous natural and synthetic ingredients, including a number of natural compounds not available in the U.S. Foreign-sourced materials may, depending on the product, account for a substantial portion of the finished products' value. It is estimated that overall foreign-sourced materials account for some 75 percent of total material value.

The foreign-sourced materials which will account for the primary FTZ savings are as follows:

Essential Oils	HTSUS 3301.13.0000, 4.6%
	HTSUS 3301.12.0000, 3.2%
Heterocyclic compounds with nitrogen hetero-atoms	HTSUS 2933.39.2700, 9.5%
Heterocyclic compounds with oxygen hetero-atoms	HTSUS 2932.99.9000, 3.7%
	HTSUS 2932.29.5050, 3.7%
	HTSUS 2932.29.4500, 1.8/kg+11.4%
	HTSUS 2932.19.5000, 3.7%
	HTSUS 2932.19.1000, 6.5%
Carboxylic acids	HTSUS 2918.30.9000, 3.7%
Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids	HTSUS 2916.19.5000, 3.7%
Ketones and quinones whether or not with other oxygen functions, and their halogenated, sulfonated, nitrated, or nitrosated derivatives.	HTSUS 2914.40.0000, 4.8%
	HTSUS 2914.29.5000, 4.8%
	HTSUS 2914.23.0000, 5.5%
Aldehydes, whether or not with oxygen function; cyclic polymers of aldehydes; paraformaldehyde.	HTSUS 2913.30.2000, 4.8%
Epoxides, epoxy alcohols, expoxyphenols and epoxy ethers	HTSUS 2910.90.5000, 4.8%
Cyclic alcohols	HTSUS 2906.19.5000, 5.5%
Acyclic alcohols	HTSUS 2905.29.9000, 3.7%
	HTSUS 2905.22.5050, 4.8%
	HTSUS 2905.22.5010, 4.8%

The application indicates that the company may also import under FTZ procedures a wide variety of other flavor and fragrance materials from the following general categories: sugars, gelatins, chlorides, fruit and vegetable extracts and oils, as well as various other natural and synthetic ingredients and products used in production, packaging and distribution of flavor and fragrance products (duty rates range 0–19.6%).

Zone procedures would exempt Firmenich from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials and choose the duty rate that applies to the finished products (duty free) instead of the rates otherwise applicable to the foreign materials (noted above). The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed 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 the address below. The closing period for their receipt is November 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 29, 1999.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 6 World Trade Center, Rm. 635, New York, NY 10048

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW, Washington, DC 20230

Dated: September 2, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–23772 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–99]

Foreign-Trade Zone 44—Mt. Olive, NJ; Request for Manufacturing Authority, Givaudan Roure Corporation, (Flavor and Fragrance Products), Mt. Olive, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the New Jersey Commerce and Economic Growth Commission, Trenton, NJ, grantee of FTZ 44, pursuant to § 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Givaudan Roure Corporation (Givaudan) to manufacture flavor and fragrance products under FTZ procedures within FTZ 44. It was formally filed on September 3, 1999.

The Givaudan facility (186,000 sq. ft.) is located at 300 Waterloo Valley Road within FTZ 44 in Mt. Olive, New Jersey. The Givaudan facility (186 employees) is used to produce a variety of flavors and fragrances, which are used in soaps, detergents, perfumes, cosmetics, toiletries and household products blended from numerous natural and synthetic ingredients. Most of the finished products are categorized as fragrance compounds (duty rate—zero). The products are blended from a variety of natural and synthetic ingredients, a number of which are not available in the U.S. Foreign-sourced materials will account for, on average, 50 percent of the finished products' value, and include compounds such as tropional, peach pure, fixambrene, verdantiol, evernyl, hexenyl salicylate-cis-3, ethyl methyl butyrate, phenoxyethyl isobutyrate, phenyl ethyl acetate, linalyl acetate synthetic FCC, hexenyl acetate-CIS 3, jasnone cis, isoraldeine, ionone beta synthetic, nethylionantheme gamma, isoraldeine pure, lilial, cyclamen aldehyde extra, tricyclal, vernaldehyde, cyclal, lemarome, melonal, sandalore, linalool synthetic, ethyl linalool, rhodinol, tetrahydro linalool, and dimetol (duty rates on these items range from 3.7% to 12.2%). The application indicates that the company may also import under FTZ procedures a wide variety of other fragrance compounds, as well as other materials related to packaging and distribution of fragrance products.

Zone procedures would exempt Givaudan from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials and choose the duty rate that applies to the finished products (duty free) instead of the rates otherwise applicable to the foreign materials (noted above). The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste (1%). The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed 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 the address below. The closing period for their receipt is November 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 29, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 3, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–23773 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–475–801, A–588–804, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

ACTION: Notice of amended final results of administrative reviews.

SUMMARY: The United States Court of International Trade and the United States Court of Appeals for the Federal Circuit have affirmed the Department of Commerce's final remand results affecting final assessment rates for the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The period of review is May 1, 1992, through April 30, 1993. As there is now a final and conclusive court decision in these cases (with the exception of the case on Japan for which certain decisions are on appeal to the Court of Appeals for the Federal Circuit), we are amending our final results of reviews and we will instruct the U.S. Customs Service to liquidate entries subject to these reviews with the exception of those still under appeal.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tabash or Robin Gray, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5047 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR part 353 (1995).

Background

On February 28, 1995, the Department published its final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom, covering the period May 1, 1992, through April 30, 1993 (*AFBs 4*). See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty*

Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation In Part of Antidumping Duty Orders, 60 FR 10900,10959 (February 28, 1995). These final results were amended on March 31, 1995, May 15, 1995, June 13, 1995, June 29, 1995, December 19, 1995, and August 8, 1997 (see 60 FR 16608, 60 FR 25887, 60 FR 31143, 60 FR 33791, 60 FR 65264, and 62 FR 42745, respectively). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). A domestic producer, the Torrington Company, and a number of respondent interested parties filed lawsuits with the United States Court of International Trade (CIT) challenging the final results. These lawsuits were litigated at the CIT and the United States Court of Appeals for the Federal Circuit (CAFC). In the course of this litigation, the CIT and CAFC issued a number of orders and opinions, of which the following have resulted in changes to the antidumping margins calculated in *AFBs 4*:

The Torrington Company v. *United States,* Slip Op. 97–107 (CIT September 17, 1997) with respect to France;

The Torrington Company v. *United States,* Slip Op. 97–136 (CIT September 19, 1997) with respect to Sweden;

The Torrington Company v. *United States,* Slip Op. 97–29 (CIT March 7, 1997) with respect to Sweden;

NSK Ltd. v. *United States,* Slip Op. 95–163 (CIT September 25, 1995) with respect to Japan;

NSK Ltd. v. *United States,* Slip Op. 97–154 (CIT November 20, 1997) with respect to Japan;

NSK Ltd. v. *United States,* Slip Op. 98–34 (CIT March 24, 1998) with respect to Japan;

FAG Italia S.p.A. and FAG Bearings Corporation; SKF USA Inc., and SKF Industrie S.p.A. v. *United States et al. (FAG/SKF/Torrington),* Slip Op. 96–187 (CIT November 22, 1996) with respect to Italy;

The Torrington Company v. *United States,* Slip Op. 98–116 (CIT August 12, 1998) with respect to Singapore;

The Torrington Company v. *United States,* Slip Op. 97–140 (CIT September 26, 1997) with respect to Thailand; the CAFC upheld the CIT on October 7, 1998, at 156 F. 3d 1361 (Fed. Cir. 1998);

FAG U.K. et al v. *United States,* Slip Op. 97–77 (CIT June 18, 1997) with respect to the United Kingdom; the CAFC dismissed appeal number 97–1550 on December 5, 1997.

In the context of the above-cited litigation, the CIT (in some cases based on decisions by the CAFC) ordered the Department to make methodological changes and to recalculate the antidumping margins for certain firms under review. Specifically, the CIT ordered the Department, *inter alia,* to make the following changes on a company-specific basis:

SNR France—correct a ministerial error;

SKF France—correct a ministerial error;

Nachi Japan—correct a clerical error;

NSK Japan—

(1) correct a clerical error,

(2) apply a tax-neutral methodology in computing the value-added tax adjustment,

(3) deny the adjustment to foreign market value for NSK's return rebates and post-sale price adjustments, and

(4) exclude NSK's zero-priced sample transfers from its U.S. sales database;

IKS Japan—

(1) correct the erroneous calculation of a negative United States price for certain observations and

(2) correct the erroneous inclusion of movement expenses incurred in Japan in the calculation of movement expenses for further-manufactured merchandise;

FAG Italy—

(1) use the approved tax-neutral methodology for adjusting for value-added taxes,

(2) explain the circumstances in which it will apply the reimbursement regulation in an exporter's sales price (ESP) situation, and

(3) correct the clerical error and recalculate FAG's margin to include margins for best information available sales;

SKF Italy—

(1) use the approved tax-neutral methodology for adjusting for value-added taxes,

(2) explain the circumstances in which it will apply the reimbursement regulation in an ESP situation, and

(3) correct a clerical error;

NMB/Pelmec—recalculate NMB's constructed value (CV) and cost of production (COP) after allocating research and development costs of Minebea Co., Ltd., over total consolidated cost of sales;

SKF Sweden—

(1) treat Astra and Asea Brown Bovery as unrelated to SKF Sverige AB,

(2) use a tax-neutral value-added tax methodology,

(3) explain when the reimbursement regulation would apply in an ESP situation,

(4) consider whether a company-specific arm's-length test is warranted and, if so, to apply such a test, and

(5) to correct clerical errors in the computer program;

NMB/Pelmec Thailand—

(1) recalculate NMB's CV and COP after allocating research and development costs of Minebea Co., Ltd., over total consolidated cost of sales, and

(2) correct the packing expense clerical error;

FAG-Barden and NSK–RHP U.K.—

(1) correct the clerical error with respect to FAG's U.S. sales,

(2) use the approved tax-neutral methodology for adjusting for value-added taxes,

(3) correct the clerical error in the conversion of insurance costs to dollars in cases in which the U.S. sales were already valued in dollars, and

(4) correct a clerical error in the application of value-added tax to the HEDGE value.

The CIT affirmed the Department's final remand results affecting final assessment rates for all the above cases (except the reviews involving certain Japanese companies which are still subject to further litigation). As there are now final and conclusive court decisions in these actions, we are amending our final results of review in these matters, with the exception of those cases which are still under appeal, and we will subsequently instruct the Customs Service to liquidate entries subject to these reviews.

Amendment to Final Results

Pursuant to section 516A(e) of the Act, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom, except for those cases still under appeal, for the period May 1, 1992, through April 30, 1993. The revised weighted-average margins are as follows:

Company	BBs	CRBs	SPBs
FRANCE			
SKF	2.37	(1)	37.98
SNR	1.89	2.58	(2)
ITALY			
FAG	2.48	(1)	.....
SKF	3.68	0.00	.....
JAPAN			
IKS	4.65	(2)	(2)
Nachi	12.46	1.03	(2)
NSK	16.10	10.37	(1)
SINGAPORE			
NMB/Pelmec	4.70	.....	.....
SWEDEN			
SKF	13.55	10.62	.....
THAILAND			
NMB/Pelmec	0.01	.....	.....

Company	BBs	CRBs	SPBs
UNITED KINGDOM			
FAG-Barden	4.65	8.22	.....
NSK-RHP	14.49	20.03	.....

[1] No U.S. sales during the review period.
[2] No review requested.

Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by these reviews. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department has already issued appraisement instructions to the Customs Service for certain companies whose margins have not changed from those announced in *AFBs 4* and the previous amendments. For companies covered by these amended results, the Department will issue appraisement instructions to the U.S. Customs Service after publication of these amended final results of reviews.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 1, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23775 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–601]

Final Results of Expedited Sunset Review: Brass Sheet and Strip From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Brass Sheet and Strip from Sweden.

SUMMARY: On February 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping order on brass sheet and strip from Sweden (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act''). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, a waiver) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Result of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 13, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

This order covers shipments of brass sheet and strip, other than leaded and tinned, from Sweden. The chemical composition of the covered products is currently defined in the Copper Development Association (''C.D.A.'') 200 Series or the Unified Numbering System (''U.N.S.'') C2000. This review does not cover products with chemical compositions that are defined by anything other than either the C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over .0006 inches (.15 millimeters) through .1888 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule (''HTS'') item numbers 7409.21.00 and 7409.29.00. The HTS numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

History of the Order

The antidumping duty order on brass sheet and strip from Sweden was published in the **Federal Register** on March 6, 1987 (52 FR 6998).[1] In that order, the Department indicated that the weighted-average dumping margin for all entries of brass sheet and strip from Sweden is 9.49 percent.[2] Since that time, the Department has completed several administrative reviews.[3] The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping order on brass sheet and strip from Sweden (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Heyco Metals, Inc. (''Heyco''), Hussey Copper Ltd. (''Hussey''), Olin Corporation-Brass Group (''Olin''), Outokumpu American Brass (''OAB'') (formerly American Brass Company),[4] PMX Industries, Inc. (''PMX''), Revere Copper Products, Inc. (''Revere''), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL/CIO) (collectively ''the domestic interested parties'') on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under sections 771(9)(C) and 771(9)(D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged

[1] *See Antidumping Duty Order: Brass Sheet and Strip From Sweden,* March 6, 1987 (52 FR 6998).

[2] However, the order and subsequent reviews dealt with only one Swedish company, Outokumpu (in the original investigation, Outokumpu was doing business under the name Metallverken Nederland B.V., *see* March 3, 1999, Substantive Response of the domestic interested parties at 27).

[3] *See Brass Sheet and Strip From Sweden: Final Results of Antidumping Duty Administrative Review,* November 27, 1990 (55 FR 49317); *Brass Sheet and Strip From Sweden: Final Results of Antidumping Duty Administrative Reviews,* January 23, 1992 (57 FR 2706); *Brass Sheet and Strip From Sweden: Amendment to Final Results of Antidumping Duty Administrative Review,* May 7, 1991 (56 FR 21128); *Brass Sheet and Strip From Sweden: Final Results of Antidumping Duty Administrative Review,* July 1, 1992 (57 FR 29278); *Brass Sheet and Strip From Sweden: Affirmation of the Results of Redetermination Pursuant to Court Remand,* April 28, 1994 (59 FR 21958); and *Brass Sheet and Strip From Sweden: Final Results of Antidumping Duty Administrative Review,* January 18, 1995 (60 FR 3617).

[4] Outokumpu American Brass is opposing continuation of the antidumping duty order against Sweden. *See* March 3, 1999 Substantive Response of the domestic interested parties at page 3, footnote 1.

in the production of subject brass sheet and strip in the United States.

We received a complete substantive response from the domestic interested parties on March 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In their substantive response, the domestic interested parties indicate that most of their members were parties to the original investigation with a few exceptions: Heyco did not participate in the original investigation but fully supports the instant review, and PMX was established after the original petitions were filed. The domestic parties also note that OAB was formerly known as American Brass Company.

We received a statement of waiver from respondent interested party, Outokumpu, to this proceeding, (*see* Outokumpu's March 3, 1999 Statement of Waiver). In its waiver, Outokumpu made unsolicited comments that it no longer produces the subject merchandise in Sweden, and that it dismantled and removed the machinery required to produce the subject merchandise from Swedish plants.[5] As a result of Outokumpu's filing of waiver, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.[6]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995, *see* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on brass sheet and strip from Sweden is extraordinarily complicated. Therefore, on June 7, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[7]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department received a statement of waiver from the only respondent interested party, Outokumpu.

In their substantive response, the domestic interested parties propose that revocation of the order will likely lead to continuation or recurrence of dumping of brass sheet and strip from Sweden (*see* March 3, 1999 Substantive Response of the domestic interested parties at 44–45). To illustrate their contention, the domestic interested parties point out a drastic decline of import volumes of the subject merchandise since the issuance of the order. Also, the domestic interested parties indicate that, since the imposition of the order, dumping of the subject merchandise has continued and is presently persisting above the *de minimis* level. *Id.* 39–40.[8] As a result, the domestic interested parties conclude, dumping of the subject merchandise will continue if the order were revoked.

With respect to the import volumes of the subject merchandise, the domestic interested parties note that the post-order import volume in 1987 was a mere 35.4 percent of the pre-order import volume in 1985. *Id.*[9] In addition, the domestic interested parties state that imports of the subject merchandise continue to decline: just 189,000

[5] To support this, Outokumpu submitted two unsolicited affidavits, each attesting to the fact that Outokumpu no longer produces the subject merchandise in Sweden: one from Programme Director of Trade Policy for the Federation of Swedish Industries and the other from Division for the Americas Desk Officer at the Swedish Ministry for Foregin Affairs. Nonetheless, as per section 351.218(d)(2)(i) of the Sunset Regulation, the Department did not consider the unsolicited comments made by Outokumpu in making its determination.

[6] The domestic interested parties filed comments, pertaining to the Department's decision to conduct a expedited (120-day) sunset review for the present review, in which the domestic party concurred with the Department's decision, *see* May 12, 1999 the domestic interested parties' comments on the Adequacy of Responses and the Appropriateness of Expedited Sunset Review at 2.

[7] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China, Porcelain-on-Steel Cooking Ware From Taiwan, Top-of-the-Stove Stainless Steel Cooking Ware From Korea (South) (AD & CVD), Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan (AD & CVD), Standard Carnations From Chile (AD & CVD), Fresh Cut Flowers From Mexico, Fresh Cut Flowers From Ecuador, Brass Sheet and Strip From Brazil (AD & CVD), Brass Sheet and Strip From Korea (South), Brass Sheet and Strip From France (AD & CVD), Brass Sheet and Strip From Germany, Brass Sheet and Strip From Italy, Brass Sheet and Strip From Sweden, Brass Sheet and Strip From Japan, Pompon Chrysanthemums From Peru: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 30305 (June 7, 1999).

[8] After finding all exporters/manufacturers were dumping the subject merchandise at a weighted-average margins of 9.49 in the less than fair value investigation, the Department has dealt exclusively with Outokumpu as a lone respondent interested party in all the subsequent administrative reviews. For the following reviews, Outokumpu's dumping margins were as indicated: 5.64 percent for 1986–1988, 5.41 percent for 1988–1989, 6.32 percent for 1989–1990, 9.49 percent for 1990–1991, 8.60 percent for 1991–1992., *see* footnote 3, supra.

[9] The domestic interested parties acknowledge that during 1987–1991 the imports of the subject merchandise increased slightly; nonetheless, they remained well below the 1985 level.

pounds in 1992, no imports for 1993–1997, and in 1998 just 761 pounds. *Id.*

In conclusion, the domestic interested parties urge that the Department should find that dumping would be likely to continue if the order is revoked because dumping margins for the subject merchandise have existed significantly above the *de minimis* level over the life of the order, because the imports of the subject merchandise immediately and substantially declined after the issuance of the order, and because the imports of the subject merchandise have become nearly non-existent since 1992. The aforementioned circumstances, according to the domestic interested parties, provide a clear indication that the Swedish brass industry is unable to sell in the United States without dumping.

As indicated in Section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and House Report at 63–64, the Department considered whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to weighted-average dumping margins in previous administrative reviews, the Department agrees with the domestic interested parties that weighted-average dumping margins at a level above *de minimis* have persisted over the life of the order and currently remain in place for all Swedish producers and exporters of brass sheet and strip.[10]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after the issuance of the order. The data supplied by the domestic interested parties and those of the United States Census Bureau IM146s and the United States International Trade Commission indicate that, since the imposition of the order, import volumes of the subject merchandise have declined substantially. Namely, the import volumes of the subject merchandise declined substantially immediately following the imposition of the order. Moreover, for the period 1994–1998, Census Bureau IM 146 data do not reflect any annual imports of the subject merchandise.[11] Therefore, the Department determines that the import volumes of the subject merchandise decreased significantly after the issuance of the order.

Given that dumping has continued over the life of the order; that import volumes of the subject merchandise decreased significantly after the issuance of the order; that respondent interested parties have waived their right to participate in this review; and that there are no arguments and/or evidence to the contrary, the Department agrees with the domestic interested parties' contention that the Swedish brass industry is incapable of selling the subject merchandise in the United States at fair value. Consequently, the Department determines that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less-than-fair-value, published a weighted-average dumping margin for Outokumpu and ''all others': 9.49 percent (52 FR 819, January 9, 1987).[12] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, citing the SAA at 890 and the *Sunset Policy Bulletin,* the domestic interested parties state that the Department normally will provide the Commission with the dumping margins from the investigation because those are the only calculated margins that reflect the behavior of exporters without the discipline of the order in place. (*See* the March 3, 1999 Substantive Response of the domestic interested parties at 45–46.) Therefore, the domestic interested parties urge, the Department should abide by its practice, as set forth in the regulations, and should provide to the Commission the margin set forth in the original investigation.

The Department agrees with the domestic interested parties' suggestion pertaining to the margin that is likely to prevail if the order were revoked. Because the original 9.49 percent margin accurately reflects the behavior of Swedish producers and exporters without the discipline of an order in place, the Department will provide to the Commission that margin found in the original investigation. Absent argument and evidence to the contrary, the Department sees no reason to change its usual practice of selecting the rate from the original investigation. We will report to the Commission the company-specific and all others rates contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Outokumpu (formerly Metallverken AB)	9.49
All Others	9.49

This notice serves as the only 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 of the Department's regulations. 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 five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23044 Filed 9–10–99; 8:45 am]

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[10] *See* footnote 3, supra, for the list of final determinations of administrative reviews in which the Department found above *de minimis* weighted-average margins for Swedish producers/exporters in all periods of investigation. Also, *see* footnotes 7, supra for a history of weighted-average dumping margins found for the subject merchandise.

[11] Although domestic interested parties state that 761 pounds of the subject merchandise were imported in 1998, no source is given for this figure.

[12] See footnote 2, supra.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal From the People's Republic of China; Final Results of Second Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China.

SUMMARY: We have determined that sales by China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation have been made below normal value during the period of review of February 1, 1997, through January 31, 1998. Since we were unable to verify that China Hunan International Economic Development Corporation reported all of its U.S. sales during the period of review, we are applying adverse facts available to calculate the dumping margin for this exporter of the subject merchandise. Based on these final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Craig Matney, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2239 or (202) 482–1778, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all references to the Department's regulations are to 19 CFR Part 351 (April 1998).

Background

On February 6, 1996, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on manganese metal from the People's Republic of China (PRC). *See Notice of Amended Final Determination and Antidumping Duty Order: Manganese Metal from the People's Republic of China*, 61 FR 4415 (February 6, 1996) (*LTFV Investigation*). In accordance with 19 CFR 351.213(b)(2), on February 9, 1998, Elkem Metals Company and Kerr-McGee Chemical Corporation (the petitioners) requested that we conduct an administrative review of this order. On March 23, 1998, in accordance with 19 CFR 351.213(c)(3), we published a notice of initiation of this antidumping duty administrative review. *See* 63 FR 13837.

On March 8, 1999, we published our preliminary results of review. *See* 64 FR 10986. Included in our *Preliminary Results* notice was our notice of partial rescission of this review with respect to two PRC exporters: China National Electronics Import and Export Hunan Company (CEIEC) and Minmetals Precious & Rare Minerals Import & Export Corporation (Minmetals).

We subsequently provided interested parties an opportunity to comment on the preliminary results, and held a public hearing on May 14, 1999. The following parties submitted comments: Elkem Metals Company and Kerr-McGee Chemical Corporation (together comprising the petitioners), and China Hunan International Economic Development Corporation (HIED) and China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation (CMIECHN/CNIECHN) (together comprising the respondents), as well as Sumitomo Canada, Limited (SCL) (a Canadian reseller of subject merchandise). Because it was not practicable to complete the review within the time limit mandated by section 751(a)(3)(A) of the Act, on July 1, 1999, we published a notice of extension of time limit for this review. *See* 64 FR 35626.

The Department is conducting this administrative review in accordance with section 751 of the Act. The period of review (POR) is February 1, 1997 through January 31, 1998.

Scope of Review

The merchandise covered by this review is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this administrative review, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 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 proceeding is dispositive.

Verification

We verified factor information provided by Xiang Tan Huan Yu Metallurgical Products Plant (Huan Yu). We also conducted sales verifications at HIED, CMIECHN/CNIECHN, and Minmetals. Our verification at each of these companies consisted of standard verification procedures, including the examination of relevant sales and financial records and the selection of original documentation containing relevant information. In addition to these standard verifications, we also verified the sales documents submitted by SCL. Our verification results for each of these companies are detailed in the verification reports on file in the Central Records Unit (CRU) in room B–099 of the Department's main building.

Export Price

For those U.S. sales made by CMIECHN/CNIECHN and which we verified, we calculated an export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and constructed export price treatment was not otherwise indicated.

For these sales, we calculated export price based on the price to unaffiliated purchasers. We deducted an amount, where appropriate, for foreign inland freight, ocean freight, and marine insurance.[1] The costs for these items were valued in the surrogate country.

As discussed in the *Customs Data* section below, there were many more shipments of manganese metal listing CMIECHN/CNIECHN as the manufacturer/exporter entered into the United States during the POR than the number of CMIECHN/CNIECHN's verified U.S. sales. We have determined that these additional entries are not CMIECHN/CNIECHN sales for the purposes of this review and, therefore,

[1] For a detailed discussion of how we derived net export price and constructed value, *see Memorandum to the Case File; Calculations for the Final Results of Review for CMIECHN/CNIECHN* (September 7, 1999), a public version of which is available in room B–099 of the Department's main building.

we have not calculated an export price for these entries. Likewise, for the reasons enumerated in the *Facts Available* section below, we have not calculated an export price for HIED's sales.

Normal Value

1. Non-Market-Economy Status

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Furthermore, available information does not permit the calculation of NV using home-market prices, third-country prices or constructed value under section 773(a) of the Act. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market-economy country which is a significant producer of comparable merchandise.

2. Surrogate-Country Selection

In accordance with section 773(c)(4) of the Act and section 351.408(b) of our regulations, we find that India has a level of economic development comparable to the PRC and that it is a significant producer of comparable merchandise.[2] Therefore, for this review, we have selected India as the surrogate country and have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

3. Factors-of-Production Valuation

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include but are not limited to the following elements: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining potential surrogate values, we selected, where possible and appropriate, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices either within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. Where we could not obtain a POR-representative price for an appropriate surrogate value, we selected a value in accordance with the remaining criteria mentioned above and which was the closest in time to the POR. In accordance with this methodology, we have valued the factors as described below.[3]

We valued manganese ore using a June 1998 export price quotation (in U.S. dollars) from a Brazilian manganese mine for manganese carbonate ore. Consistent with our methodology used in the first administrative review final results, this price was adjusted to reflect the decline in manganese ore world prices since the POR.[4] We adjusted this price further to account for the reported manganese content of the ore used in the PRC manufacture of the subject merchandise and to account for the differences in transportation distances.

To value various process chemicals used in the production of manganese metal, we used prices obtained from the following Indian sources: *Indian Chemical Weekly* (February 1997 through November 1997); the *Monthly Statistics of Foreign Trade of India, Volume II—Imports* (February through May 1997) (*Import Statistics*); price quotations from Indian chemicals producers, and the *Indian Minerals Yearbook* (1995) (*IMY*). Where necessary, we adjusted these values to reflect inflation up to the POR using an Indian wholesale price index (WPI) published by the International Monetary Fund (IMF). Additionally, we adjusted these values, where appropriate, to account for differences in chemical content and to account for freight costs incurred between the suppliers and manganese metal producers.

To value the labor input, consistent with 19 CFR 351.408(c)(3), we used the regression-based estimated wage rate for the PRC as calculated by the Department and updated in May 1999.

For selling, general, and administrative expenses (SG&A), factory overhead, and profit values, we used information from the *Reserve Bank of India Bulletin* (January 1997) for the Indian industrial grouping ''Processing and Manufacturing: Metals, Chemicals, and Products Thereof.'' To value factory overhead, we calculated the ratio of factory overhead expenses to the cost of materials and energy. Using the same source, we also calculated the SG&A expense as a percentage of the cost of materials, energy and factory overhead, and profit as a percentage of the cost of production (*i.e.*, materials, energy, labor, factory overhead and SG&A).

For most packing materials values, we used per-unit values based on the data in the *Import Statistics.* For iron drums, however, we used a price quotation from an Indian manufacturer rather than a value from the *Import Statistics* because the quoted price was for the appropriate type of container used, whereas the *Import Statistics* were aggregated over various types of containers. We made further adjustments to account for freight costs incurred between the PRC supplier and manganese metal producers.

To value electricity, we used the average rate applicable to large industrial users throughout India as reported in the *1995 Confederation of Indian Industries Handbook of Statistics.* We adjusted the March 1, 1995, value to reflect inflation up to the POR using the WPI published by the IMF.

To value rail freight, we relied upon rates published in June 1998 by the Indian Railway Conference Association, deflated by the Indian WPI to derive a surrogate value contemporaneous with the POR. To value truck freight, we used a price quotation from an Indian freight provider. Because this quotation was for a period subsequent to the POR, we deflated the value back to the POR using the WPI published by the IMF.

4. Changes Since the Preliminary Results

We have made certain changes, as identified below, in our margin calculations pursuant to comments we received from interested parties, to the availability of updated information, and to the discovery of clerical errors since the preliminary results.

(a) Liquid ammonium: *see Comment 5*

(b) Sulphuric acid: *see Comment 5*

(c) Rail freight: *see Comment 10*

(d) Packing materials: *see Comment 13*

[2] *See Memorandum to Susan Kuhbach from Jeff May; Non-Market-Economy Status and Surrogate Country Selection* (June 23, 1998), a public copy of which is available in the Central Records Unit.

[3] For a more detailed explanation of the methodology used in calculating various surrogate values, *see Memorandum to the File from Case Team; Factors of Production Valuation for the Final Results* (September 7, 1999).

[4] *See Manganese Metal from the PRC; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440, 12442 (March 13, 1998) (*First Review Results*).

(e) Labor: In May 1999, the Department revised its regression-based PRC wage rate (as published on the Department's website). This revised wage rate has been incorporated into these final results.

Customs Data

In the course of this administrative review, the Department obtained customs entry documentation from the U.S. Customs Service (Customs). We initially requested this customs data to verify the non-shipment claims by certain PRC exporters. Our request for entry data was also responsive to concerns expressed by the petitioners that many more shipments of manganese metal had entered the United States during the POR than were reported as sales by the respondents. The information we obtained included the documentation submitted by the U.S. importers, as required upon entry, for each shipment of subject merchandise that entered during the POR. We have closely examined this documentation for each entry and find the following.[5]

To start, the customs data indicates that many more shipments of manganese metal listing CMIECHN/CNIECHN as the exporter were entered into the United States than the number of U.S. sales reported by CMIECHN/CNIECHN and verified by the Department. In fact, the verified sales represent less than five percent of the total value of POR entries listing CMIECHN/CNIECHN as the exporter. CMIECHN/CNIECHN maintains that its verified sales are the only sales it made to the United States during the POR. Thus, the issue before the Department was whether this merchandise was properly identified as being exported by CMIECHN/CNIECHN and, consequently, whether these entries were entitled to CMIECHN/CNIECHN's cash deposit rate.

An examination of this customs documentation shows that these disputed CMIECHN/CNIECHN entries can be classified into three categories. The first category consists of entries which correspond to sales of subject merchandise reported by the respondents in the first administrative review. The Department therefore has previously reviewed these sales and calculated the appropriate dumping margin on these entries accordingly.

The second category of disputed CMIECHN/CNIECHN entries includes what appear to be resales of subject merchandise that was, at some point, purchased from CMIECHN/CNIECHN. The documentation for these reseller entries generally includes a commercial invoice from the reseller to the U.S. importer. In certain instances this commercial invoice also indicates that this merchandise was originally sourced from CMIECHN/CNIECHN.[6] The defining characteristic of the documentation for this category of entries, however, is that there are no commercial invoices from CMIECHN/CNIECHN addressed directly to the U.S. importer.

We note that most of the entries in the second-category are U.S. sales of the third-country reseller SCL. During this review, the Department verified at SCL that this merchandise was, in fact, purchased from CMIECHN/CNIECHN. The Department also verified at SCL and CMIECHN/CNIECHN that there was no reason to believe that CMIECHN/CNIECHN would have known that these sales to SCL were destined for exportation to the United States.[7]

The third category of disputed CMIECHN/CNIECHN entries is comprised of shipments for which the customs documentation includes commercial invoices from CMIECHN/CNIECHN directly to the U.S. importer. CMIECHN/CNIECHN alleges that these commercial invoices and certain other documents submitted to Customs for these entries are, in fact, forged and has formally asked Customs to investigate whether these documents represent customs fraud. However, Customs has not made any determination regarding the accuracy and authenticity of these documents as of the date of these final results.

Nevertheless, in the course of this review the Department has examined a considerable amount of evidence regarding the nature of and circumstances surrounding these disputed CMIECHN/CNIECHN entries. There is substantial evidence which supports a finding that CMIECHN/CNIECHN was improperly identified as the exporter of record of these disputed entries and, consequently, that these entries should not have been subject to CMIECHN/CNIECHN's cash deposit rate.[8] For instance, an affidavit on the record of this review suggests that one U.S. importer may have knowingly entered subject merchandise incorrectly under CMIECHN/CNIECHN's cash deposit rate rather than under the PRC-wide rate. Moreover, we note that the relationship between other PRC exporters and the other U.S. importer of these disputed CMIECHN/CNIECHN entries is already in question and was one of the reasons we have used adverse facts available to determine HIED's dumping margin in these final results. *See Facts Available* section below. Thus, based on this evidence and the fact that these entries do not reflect sales from third-country resellers, there is reason to believe that the importers of these disputed entries did not enter the merchandise at the proper cash deposit rate.

Given the above, and based upon our verification of CMIECHN/CNIECHN's total U.S. sales, we have determined that the disputed CMIECHN/CNIECHN entries which comprise this third category are neither U.S. sales nor exports by CMIECHN/CNIECHN for the purposes of this review. Consequently, we determine that these entries were not entitled to CMIECHN/CNIECHN's cash deposit rate and, instead, should have been subject to the PRC-wide rate of 143.32 percent. Therefore, as explained in the *Assessment and Cash Deposit Rates* section below these entries will be liquidated at the PRC-wide rate of 143.32 percent.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form requested, (3) significantly impedes a proceeding under the antidumping statute, or (4) provides information that cannot be verified, the Department shall use, subject to section 782(d), facts available in reaching the applicable determination. While section 782(d) of the Act provides certain conditions that must be satisfied before the Department may disregard all or part of the information submitted by a respondent, these conditions only apply when the information submitted can be verified and the interested parties have cooperated to the best of their abilities. *See* section 782(e) of the Act.

1. Application of Facts Available

We determine that, in accordance with sections 776(a)(2) and 776(b) of the

[5] For a detailed analysis of the issues raised by this customs data, *see Memorandum to Richard W. Moreland from Greg Campbell; Major Concurrence Issues for the Final Results of Review* (September 7, 1999) (*Final Concurrence Memo*), a public version of which is available in room B–099 of the Department's main building.

[6] The documentation for some of these reseller entries also includes inspection certificates, country of origin certificates, or secondary commercial invoices indicating that the merchandise was, at some point, purchased from CMIECHN/CNIECHN.

[7] For a detailed account of the Department's verification at SCL, *see Memorandum to the Case File; Results of Verification of SCL* (July 23, 1999), a public version of which is available in room B–099 of the Department's main building.

[8] *See Final Concurrence Memo.*

Act, the use of facts otherwise available, adverse to the company, is appropriate for HIED because its sales data could not be verified and because it did not cooperate to the best of its ability in the course of this review. The bases for these conclusions are detailed below.

On August 13, 1998, the Department provided HIED with the customs data showing the POR entries into the United States of manganese metal purportedly from HIED. In an accompanying letter we noted that these entries differed in material ways from HIED's reported U.S. sales and requested that HIED comment on this inconsistency. HIED replied that its reported sales were correct and could be reconciled with its books. HIED further noted that any inconsistencies were likely due to ''fraudulent schemes'' on the part of other exporters to export subject merchandise into the United States under the most favorable circumstances.

The Department subsequently conducted a verification of HIED's reported sales. During the course of verification, we encountered numerous inconsistencies and delays, and certain documents were not available. For instance, HIED officials' explanation of the company's relationship to its U.S. customer was, in general, incongruous and incomplete and, at times, entirely contrary to what other company officials had stated previously. Moreover, although company officials claimed initially that only one of HIED's departments and one of its affiliates made sales of manganese metal during the POR, Department officials conducting the verification (the Verification Team) subsequently identified accounting records which indicated that at least one additional business unit may also have been involved in selling manganese metal. Furthermore, the Verification Team was unable to verify the total quantity and value of subject merchandise sold by HIED and its affiliates because certain intermediate accounting records could not be reconciled to source data or to the financial statements.

Verification of the completeness of HIED's sales reporting was also seriously hindered by the Verification Team's inability to review several of the sales and accounting records reportedly maintained by HIED. In some cases, the source documentation requested by the Department to verify total sales was reportedly discarded prior to verification. Company officials offered no explanation as to why they were unable to retrieve other sales and accounting records, maintained at the company headquarters, for the majority of HIED's sales departments. Sales and accounting records for HIED's affiliates, including those selling manganese metal, were likewise not available though, according to HIED management, this was because company officials were unwilling to travel to other locations in the PRC where the documents were kept.

There were many significant delays in the verification process as a result of sorting through conflicting statements by officials and of the difficulty in locating documents which were explicitly requested by the Department in the verification outline sent prior to the verification. Despite the fact that the verification was extended—at the Department's initiative—for an additional half day, several important documents were not presented to the Verification Team until near or at the end of verification, preventing an adequate review of important data.

Subsequent to verification, the Department received from Customs supporting documentation (*e.g.*, Customs Form 7501, commercial invoices, packing lists) filed by the U.S. importer upon entering the subject merchandise into the United States for several of the entries which appeared in the customs data. The supporting documentation for several entries listed in the customs data identified HIED as the actual exporter of the subject merchandise. However, for many of these entries there were no corresponding sales listed in HIED's U.S. sales listing, as submitted to the Department.

These numerous inconsistencies and delays, and the unavailability of documentation, taken together, constitute a verification failure under section 776(a)(2)(D) of the Act. Thus, we have determined that HIED failed to report sales it made to the United States. The Department has, therefore, determined that, because HIED's reported sales data could not be verified and, generally, the credibility of the information contained in HIED's questionnaire responses could not be established, section 776(a) of the Act requires the Department to disregard HIED's questionnaire responses and apply facts available.

2. Use of Adverse Facts Available

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action* (SAA), H.R. Doc. 316, Vol. 1, 103rd Cong., 2d sess. 870 at 870 (1994). 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., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997).

As discussed above, HIED failed to provide much of the documentation requested by the Verification Team and necessary to verify HIED's sales. Moreover, various company officials' statements were contradictory on several points central to a successful verification. Furthermore, the Department identified unreported sales of subject merchandise by HIED which the company knew, or should have known, should have been properly included in the reported U.S. sales list. Thus, we have determined that HIED withheld information we requested and significantly impeded the antidumping proceeding.

We find, therefore, that HIED has not acted to the best of its ability to comply with our requests for information. Accordingly, consistent with section 776(b) of the Act, we have applied adverse facts available to this company.

3. Corroboration of Secondary Information

In this review, we are using as adverse facts available the PRC-wide rate (143.32 percent) determined for non-responding exporters involved in the *LTFV Investigation*. This margin represents the highest margin in the petition, as modified by the Department for the purposes of initiation. *See Initiation of Antidumping Duty Investigation: Manganese Metal from the PRC*, 59 FR 61869 (December 2, 1994) (*LTFV Initiation*).

Information derived from the petition constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA at 870, however, states further that ''the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference.'' In addition, the

SAA, at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

To corroborate secondary information, to the extent practicable the Department will examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For the initiation of the investigation, based on an analysis of the petition and a subsequent supplement to the petition, the Department modified the dumping margin contained in the petition. *See LTFV Initiation* at 61870. In the petition, the U.S. price was based on price quotations obtained for manganese metal from the PRC during December 1993 through May 1994. The factors of production were valued, where possible, using publicly available published information for India. Where Indian values were not available, the petitioners used data based on their own costs. For the initiation, however, the Department disallowed all factors valued by using the petitioners' own costs. Instead, we recalculated factory overhead and depreciation expenses using the statistics in the *Reserve Bank of India Bulletin* (December 1992), a publicly available and independent source used in other investigations of imports from the PRC. We also recalculated the valuation of several process chemicals using data from the independent source *Chemical Marketing Reporter.* Furthermore, we revalued electricity costs using World Bank data on electricity rates for industrial users in Indonesia, an appropriate surrogate country at a comparable level of economic development to the PRC.

We find, therefore, for the purpose of these final results that the PRC-wide margin established in the *LTFV Investigation* is reliable. As there is no information on the record of this review that demonstrates that the rate selected is not an appropriate adverse facts available rate for HIED, we determine that this rate has probative value and, therefore, is an appropriate basis for facts otherwise available.

Analysis of Comments Received

We received comments from interested parties regarding the following general topics: (1) The use of facts available, (2) the appropriate rate for resellers, and (3) the valuation of factors of production and the by-product credit. Summaries of the comments and rebuttals, as well as the Department's responses to the comments, are included below.

1. Use of Facts Otherwise Available

Comment 1: The petitioners argue that the Department, consistent with its established practice regarding respondents who have failed to report a significant portion of their U.S. sales, should apply total adverse facts available to all customs entries indicating HIED or CMIECHN/CNIECHN as the manufacturer/exporter. As a basis for this adverse facts available finding, the petitioners note that customs entry documentation and port arrival data indicate that there were several more entries from these exporters than their reported U.S. sales. None of the record information or arguments submitted by the respondents, the petitioners maintain, adequately accounts for these additional entries which the respondents claim not to have made.

First, argue the petitioners, the respondents have not sufficiently substantiated their allegations that these additional entries represent customs fraud. Minor differences in the appearance of the sales documents of an exporter are not uncommon, and do not establish one document form as authentic and the other fraudulent.

Second, the petitioners continue, even if these additional, disputed entries do represent legitimate sales by the respondents to intermediary resellers, who then resold the merchandise to the United States, these sales might still be U.S. sales for the purposes of this review if the respondents had knowledge of the ultimate U.S. destination of the sales.

The petitioners further argue that the Department encountered major problems at the verification of HIED and CMIECHN/CNIECHN and, therefore, was unable to verify the completeness of these respondents' sales reporting. In particular, the verification of CMIECHN/CNIECHN's total sales was dependent on the respondent's consistent use of its invoice numbering system. The petitioners note that the invoice numbers on many of the disputed CMIECHN/CNIECHN entries were not consistent with this numbering system. Moreover, although the Department examined at verification all of CMIECHN/CNIECHN's sales invoices reflecting this system, the Department could not then trace those invoices to the company's general accounting records. Therefore, the petitioners assert, the completeness of CMIECHN/CNIECHN's reporting of total sales remains unverified.

With regard to HIED, the petitioners note that the Department applied adverse facts available to this exporter in the preliminary results based in part on the fact that the Department could not confirm HIED's sales at verification. There is no new information on the record since the preliminary results, the petitioners maintain, that would warrant a change in this decision.

Given the above, in the petitioners' view, the Department cannot reasonably conclude that the disputed entries do not represent U.S. sales by the respondents for the purpose of this review. The Department, therefore, cannot proceed with its intention, as stated in the preliminary results, of assigning facts available to CMIECHN/CNIECHN's ''unreported sales'' while applying a calculated margin to that company's ''reviewed sales.'' The petitioners maintain that the Department has a longstanding practice of applying facts available to all of a respondent's sales if a significant portion of those sales are found to be unreported. Therefore, the petitioners argue, the Department should apply total adverse facts available to all of CMIECHN/CNIECHN's sales, ''reported and unreported,'' for these final results. Likewise, the Department should continue to apply total adverse facts available to all of HIED's sales.

The respondents counter that there is no credible evidence on the record that CMIECHN/CNIECHN failed to include a significant portion of its U.S. sales, that it withheld information, or that it has done anything wrong in this case. To the contrary, the respondents argue, CMIECHN/CNIECHN has provided

accurate and complete information regarding its U.S. sales.

The respondents further note that CMIECHN/CNIECHN's allegations regarding fraudulent entry data are still under consideration by Customs. *See Customs Data* section above. Therefore, until Customs makes an official determination regarding these allegations, no wrongdoing by CMIECHN/CNIECHN can be proven, and the petitioners arguments are mere speculation. CMIECHN/CNIECHN cannot be penalized based on the disputed customs data, the respondents maintain, if no finding in any fraud investigation by Customs has been made.

Moreover, the respondents continue, CMIECHN/CNIECHN has cooperated fully with the Department's requests for information and fully disclosed the required U.S. sales information. Contrary to the petitioners' assertion, insist the respondents, at verification the Department was able to review and trace a variety of records and documents, none of which indicated unreported sales. The Department has not found any of the problems initially identified in CMIECHN/CNIECHN's accounting practices at verification to be evidence of unreported U.S. sales.

Therefore, the respondents conclude, the Department should continue to base CMIECHN/CNIECHN's dumping margin on the sales and factors data submitted by the company. Likewise, the Department should apply a separate rate to HIED for these final results because HIED has cooperated with the Department.

Department's Position: We agree with the respondents that adverse facts available is not the appropriate basis for determining the dumping margin of CMIECHN/CNIECHN. The petitioners point to the disputed entries in the customs data and the Department's alleged inability to verify CMIECHN/CNIECHN's total sales at verification as support for the use of total adverse facts available. With regard to the first issue, for the reasons discussed in the *Customs Data* section above we have determined that the disputed CMIECHN/CNIECHN entries are not U.S. sales by CMIECHN/CNIECHN for the purposes of this review.

As to the verification of sales, although the Department experienced certain difficulties in tracing total sales through CMIECHN/CNIECHN's accounting system, these difficulties did not preclude us from verifying the completeness of CMIECHN/CNIECHN's sales reporting.[9] It is true that, due to the nature of CMIECHN/CNIECHN's methodology for recording sales, the company's accounting records cannot be fully relied upon to confirm sales made during the POR. However, for the purposes of conducting an antidumping review the Department does not require that responding companies adopt a specific accounting methodology. The Department recognizes that while some companies maintain more sophisticated records including audited financial statements, other companies have more rudimentary record-keeping systems and may lack audited financial statements. In these cases, the Department attempts to use other reasonable methods of verifying the respondents' data.

Therefore, in the case of CMIECHN/CNIECHN, because sales were not necessarily recorded in their accounting system in a consistent manner, we found other means at verification of confirming that no POR manganese metal sales were unreported. For instance, relying on the accuracy of the company's invoicing system, we reviewed in sequential order the commercial invoices for sales of all products by CMIECHN/CNIECHN. In this process, we did not identify any evidence of unreported sales.

The petitioners contend that because there were no means of confirming the accuracy and consistency of this invoicing system, the Department cannot rely on this system to verify sales. Apart from the allegedly-forged commercial invoices for the disputed entries, however, we found no inconsistencies or inaccuracies in CMIECHN/CNIECHN's application of its system of assigning numbers to its commercial invoices. We therefore find that it is reasonable to rely on this system as one means of establishing the completeness and accuracy of CMIECHN/CNIECHN reported U.S. sales.

With regard to HIED, we agree with the petitioners that continued use of adverse facts available in these final results is warranted. No significant new information has become available since the preliminary results that would lead us to reconsider this position. In response to the respondents' argument that the Department should apply a separate rate to HIED for these final results because HIED has cooperated with the Department, we note that the rate we have found for HIED is a separate rate based on facts available. Moreover, for the reasons enumerated in the *Facts Available* section above, we find that HIED has not fully cooperated with the Department in this review.

2. Appropriate Rate for Resellers

Comment 2: During the POR, SCL imported into the United States subject merchandise which it had purchased from CMIECHN/CNIECHN.[10] SCL entered its appearance in this review subsequent to the preliminary results and submitted, along with its case brief, sales documentation for all of its POR entries. SCL argues that it was necessary to become a party to this proceeding in order to object to the change in practice, as first articulated in the preliminary results, in the Department's treatment of third country exporters of subject merchandise. SCL argues that this change is an abuse of the Department's discretion and is contrary to law, for the following reasons.

First, SCL states that the Department's established policy is to assign a third-country exporter of subject merchandise the specific rate applicable to its supplier of subject merchandise in instances where the third-country exporter has not been named in a request for review, has not received a questionnaire from the Department, and where no allegation of middleman dumping has been made. SCL maintains that it is clear from the facts of this case that SCL meets these criteria and is, therefore, entitled to CMIECHN/CNIECHN's reviewed rate.

Second, the Department cannot, SCL argues, draw the adverse inference that all of the disputed entries not reported directly by CMIECHN/CNIECHN are not genuine sales of CMIECHN/CNIECHN-supplied material. To do so would be to treat SCL, a legitimate reseller of CMIECHN/CNIECHN-supplied material, the same as an unscrupulous importer committing customs fraud. In entering its merchandise under CMIECHN/CNIECHN's cash deposit rate, SCL maintains, it was not acting fraudulently but was merely acting according to its understanding of the Department's practice concerning resellers of PRC material.

Third, SCL notes that 19 U.S.C. 1675(a)(2)(B) (section 751(a)(2)(B) of the Act) provides for ''new shipper reviews'' in instances where the Department receives a request for review from a producer or exporter who did not export, during the period of

[9] For a detailed account of the Department's verification at CMIECHN/CNIECHN, *see Memorandum to the Case File; Results of Verification of CMIECHN/CNIECHN* (October 14, 1998), a public version of which is available in room B–099 of the Department's main building.

[10] SCL was both the foreign exporter and the U.S. importer of record for its entries of subject merchandise.

investigation, the merchandise subject to the antidumping duty order. However, SCL argues, it was not eligible for a new shipper review given that its supplier CMIECHN/CNIECHN had previously exported merchandise subject to the dumping order.

Fourth, SCL argues that the PRC-wide rate which the Department preliminarily determined to apply to all of the disputed CMIECHN/CNIECHN entries was originally calculated in the *LTFV Investigation* based on adverse best information available because some PRC suppliers in the investigation refused to respond to the Department's questionnaire. This adverse best information available (BIA) rate was imposed prior to the URAA. The current review, however, is subject to the URAA amendments to the Act. Under the amended Act, SCL continues, the Department can only apply facts otherwise available (formerly BIA) where an interested party withholds information, fails to provide the information in the form or manner requested by the Department, impedes the proceeding, or provides information which cannot be verified. None of these criteria apply to the actions of SCL. Moreover, the Department cannot apply inferences adverse to SCL because SCL has never failed to cooperate with the Department but, rather, has acted to the best of its ability by providing its sales documents along with its case brief as soon as it was made aware in the preliminary results of the Department's intended change in practice regarding resellers.

Based on the above, SCL argues that the Department should not liquidate SCL's entries at the PRC-wide rate, as envisioned in the preliminary results, but instead adopt one of the following alternative approaches. First, the Department could initiate a changed circumstances review in order to determine the extent of third-country sales of CMIECHN/CNIECHN merchandise and the identity of the third-country resellers. Under this approach, SCL argues, SCL would be given the opportunity to establish that CMIECHN/CNIECHN supplied SCL's merchandise and that the sales were not made below normal value.

A second alternative approach suggested by SCL would be to assess CMIECHN/CNIECHN's calculated rate on all direct or indirect sales to the United States of CMIECHN/CNIECHN material. The Department would accept SCL's factual information (submitted after the preliminary results) and then verify SCL's sales data to confirm that the merchandise was originally sourced from CMIECHN/CNIECHN.

A final alternative proposed by SCL would be to calculate a new rate specific to SCL based, not on adverse facts available, but on SCL's reported U.S. sales prices.

The petitioners argue that, according to SCL's own admission, SCL, not CMIECHN/CNIECHN, was the party with the knowledge of the U.S. destination of the merchandise entered by SCL. Thus, the petitioners contend, SCL is the exporter for the purposes of the antidumping law. Furthermore, the petitioners assert, the statute clearly requires the Department to assess antidumping duties on entries at the margin of dumping on those entries. Therefore, CMIECHN/CNIECHN's assessment rate cannot be applied to entries of merchandise exported by SCL given that the calculation of CMIECHN/CNIECHN's rate does not take into account the prices of sales from SCL to its unrelated U.S. customers.

The petitioners further maintain that if the Department finds that CMIECHN/CNIECHN, not SCL, is the exporter of these entries, then the Department must conclude that CMIECHN/CNIECHN failed to report a significant volume of U.S. sales to SCL. Therefore, the Department would have to apply the 143.32 percent facts available rate to all entries corresponding to CMIECHN/CNIECHN sales.

If the Department concludes that SCL is the exporter of these POR entries, then SCL was required to request an administrative review to obtain an assessment rate for those entries different from the PRC-wide rate. The petitioners argue that even if SCL was not the exporter of the merchandise and, therefore, could not request a new shipper review, SCL could nevertheless have requested an administrative review as the U.S. importer. The petitioners continue that the Department cannot now calculate a margin for SCL after the preliminary results when the company failed to request in a timely manner a review of its POR entries.

Finally, the petitioners contend, the Department could apply the PRC-wide rate to SCL even if that rate was based on BIA (or facts available) because in other proceedings the courts have upheld the Department's application of a BIA-based PRC-wide rate to parties that failed to request administrative reviews.

Department's Position: We agree with SCL that it's been the Department's established practice to assign to the entries of non-PRC exporters of subject merchandise from the PRC the rate applicable to the PRC supplier of that exporter. *See e.g., Manganese Metal from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review,* 64 FR 7624, 7626 (February 16, 1999); *Fresh Garlic from the PRC; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review,* 62 FR 23758, 23760; *Sparklers from the PRC; Final Results of Antidumping Duty Administrative Review,* 61 FR 39630, 39631.

The assessment language in the preliminary results was premised on the information on the record at the time. Prior to the preliminary results, much of the available information and argument centered on the possibility of unreported sales by CMIECHN/CNIECHN and potential fraud on the part of U.S. importers. At that point, SCL had not entered an appearance as an interested party. Recognizing the potential need for additional information, in the notice of our preliminary results we stated that we would reconsider, in the final results, our preliminary determination that CMIECHN/CNIECHN was not the exporter of these disputed entries in the event that ''any substantive new information on the matter, including any potential determination by the Customs Service regarding alleged customs fraud, becomes available.'' 64 FR at 10988.

Since we issued the preliminary results, substantial new information has become available that has clarified the status of SCL as a reseller. This new information includes, *inter alia,* SCL's sales documentation tracing its purchases of manganese metal from CMIECHN/CNIECHN and the subsequent resale of this subject merchandise into the United States. Our subsequent verification of SCL's documents further confirmed SCL's position as a third-country reseller of merchandise supplied by CMIECHN/CNIECHN. The SCL verification also further confirmed that, at the time of the sales transactions, CMIECHN/CNIECHN was not aware of the ultimate U.S. destination of the merchandise it sold to SCL. Moreover, the additional customs documentation which the Department obtained only after the preliminary results were issued played an important part in differentiating the disputed CMIECHN/CNIECHN entries that represented sales by the reseller SCL from those disputed entries for which customs fraud has been alleged. *See Customs Data* section above.

We took the unusual step in this review of accepting substantial new information onto the record from an interested party which entered its appearance only after the preliminary

results were issued. However, the facts and circumstances of this review, particularly as they relate to the customs data and alleged customs fraud, are themselves highly unusual. Moreover, these final results were postponed in part to develop an adequate record on which to make a determination with respect to SCL, and to give all parties sufficient time to analyze and comment on the additional information the Department has collected since the preliminary results. Therefore, the interests of no party have been prejudiced by this unusual step.

For all the above reasons, we find that the PRC-wide rate is not the rate applicable to SCL's POR entries and that SCL, as a third-country reseller, was entitled to enter the subject merchandise under CMIECHN/CNIECHN's cash deposit rate.

3. Valuation of Factors of Production

(a) Ore Valuation

Comment 3: In the preliminary results, to value the respondents' ''ore 1'' we used a June 1998 price quotation for carbonate manganese ore obtained by the respondents from a Brazilian manganese ore mine. The petitioners argue that this was an inappropriate surrogate value given that, according to information on the record provided by the petitioners, the Brazilian ore producer had ceased mining operations by 1998 and was only selling from its remaining small stock, consisting of off-specification ore, at the time of the price quote. According to the petitioners, companies in the process of closing down operations often reduce their prices below normal market levels and, therefore, this price quotation is not representative of a commercial value for the ore. The petitioners further note that the U.S. manganese importer to whom the ore price quotation was addressed (and from whom the respondents obtained the price information) has otherwise been implicated in this review in the respondents' fraud allegation. The Department cannot, the petitioners assert, rely on this price quotation as though it were obtained from a party whose information can be relied upon as truthfully presented and obtained in good faith. There is, finally, no compelling reason to rely on this price quotation given that, according to the petitioners, there are other reasonable surrogate ore values on the record, including the value the Department used in the *First Review Results*.[11]

The respondents counter by noting, first, that the price quotation from the Brazilian ore producer included the full specifications for the type of ore being offered; based on the chemical content listed, there is no reason to believe that the price quoted was for off-grade ore. Second, the respondents note that the price quotation originated from the Brazilian ore producer, not the U.S. importer to whom the quotation was addressed. In lieu of any indication or allegation that the document itself was fraudulent, the respondents argue, there is no reason to reject the price quotation as inaccurate or unreliable merely because it was addressed to an importer allegedly committing customs fraud. Finally, the respondents contend, this price quotation represents the best ore surrogate value because it is the most current information available and because it pertains to an ore type most similar to that used by the PRC manganese metal producers.

Department's Position: We agree with the respondents that the 1998 Brazilian ore price quotation represents the best ore surrogate information available on the record. To start, we note that the ore price quotation originated with the Brazilian ore producer in question, whereas the seemingly contrary information was provided by the petitioners' researcher. In light of other information regarding this surrogate value, we cannot conclude that commercial sales did not exist during the POR simply because the petitioners' researcher could not obtain information on commercial prices from the ore producer's management.

Next, we note that the ore grade's chemical composition and physical properties listed in the 1998 price quote, with the exception of the moisture content, were provided at a level of detail and specificity greater than that of the 1993 price quote, the suggested surrogate of the petitioners. The petitioners are correct in that the ore specifications listed (in either the 1993 or the 1998 quote) do not account for 100 percent of the ore's chemical content. However, based on the criteria established on the record of this and previous segments of this proceeding, we find the level of specification and detail, with regard to the ore's primary physical and chemical properties, to be sufficient for determining the quotation's suitability as a surrogate value.[12]

Moreover, given that the specifications stated for the 1998 price quotation were essentially the same as those for the 1993 price quotation (which was, undisputably, for a commercial grade ore), it would seem likely that the ore producer, a long-established seller of ore on the world market, would clearly indicate in the 1998 quotation that the ore grade on offer was not of commercial quality, if that were the case. There is nothing in the 1998 price quote, however, indicating that the merchandise on offer is not of normal commercial grade. Also, contrary to the information provided by the petitioners' researcher that ''the remaining inventories of 1998 refers to the cleaning of stocks, with very low quantity * * *'' the quoted 1998 price is for a quantity of 35,000 to 44,000 metric tons, an amount which would generally be considered commercial. Additionally, despite the petitioners' general assertion to the contrary, there is no evidence on the record to suggest that in 1998 the Brazilian mine sold its ore at a discount merely because it was in the process of closing down its mining operations.

Furthermore, we reject the petitioners' argument that we should not utilize information that was sent to a company accused by parties in this case of customs fraud. The price quotation was generated by the Brazilian producer and there is no evidence indicating that the producer was involved in any fraudulent activity.

Despite the petitioners' argument that there is no compelling reason to use the 1998 price quotation because there are other reasonable ore surrogate values on the record, we find that the 1998 price quotation represents the best ore 1 surrogate available. As discussed in the *Factors of Production Valuation* section above, where we could not identify an appropriate POR-representative surrogate value, we selected a value, in accordance with the normal surrogate criteria, which was the closest in time to the POR. In the first administrative review of this proceeding, we selected the ore grade from the Brazilian producer because among all the available ore surrogates, it best fulfilled the standard criteria for surrogate selection. However, because the 1993 price quotation was not contemporaneous with the first review POR, we adjusted the quoted price to reflect movement in manganese ore

[11] In the first administrative review of this proceeding, the Department used as a surrogate value for ore 1 a 1993 price quotation for the same basic grade of ore from the same Brazilian mine.

[12] The suitability of alternative ore surrogate values was a particularly contentious and closely examined issue in the investigation and first administrative review segments of this proceeding. The Department has, therefore, accumulated extensive expertise in considering the physical and chemical properties of manganese ore, one of the most significant inputs in the subject merchandise. *See LTFV Investigation* and *First Review Results*.

prices in the intervening years. Using the 1993 price quotation in the current administrative review, however, would require a time-adjustment spanning roughly four years. Given that the 1998 price quotation is dated only four months after the POR, consistent with the Department's established methodology we have used the more contemporaneous 1998 value.

(b) Electricity Valuation

Comment 4: To value electricity in the preliminary results, we used the average electricity rate for large industrial electricity users in India as of March 1, 1995, inflated to the POR using the Indian WPI. Subsequent to the preliminary results, the petitioners submitted an Indian WPI that was specific to the electricity industry. The petitioners argue that the general Indian WPI used in the preliminary results reflects changes in the price of a wide variety of goods across the full spectrum of the Indian economy. In contrast, the electricity-specific WPI reflects more accurately the movement in Indian electricity prices in particular. Given the Department's practice of selecting surrogates that correspond as closely as possible to the inputs used by the respondents, the petitioners argue, the Department should inflate the 1995 electricity rate by the electricity-specific WPI to derive an electricity surrogate value that is contemporaneous with the POR.

The respondents counter that, consistent with the calculations performed in previous segments of this proceeding, the Department should continue using the general Indian WPI to inflate the 1995 electricity rate. The respondents further note that the Department has never used in any case before the electricity-specific WPI submitted by the petitioners.

Department's Position: We have continued to use the general WPI to inflate the 1995 Indian electricity rate. The petitioners are correct in stating that it is the Department's general practice to use surrogate information as specific as possible to the input and industry in question. Thus, we considered very carefully the electricity-specific WPI that the petitioners submitted. Given that the Department has not examined this information in prior proceedings, and given that the publisher of this data appears to be a private research organization rather than a government agency, we attempted to analyze the methodology used to collect, synthesize and report this data.[13] We found, however, that there was insufficient information on the record to confirm the accuracy, objectivity, and breadth of coverage (*i.e.*, the extent to which the electricity data reflects price trends throughout all of India) of the data presented.

Therefore, considering the uncertainty surrounding this data, we find that the continued use of the general Indian WPI, as published in the *International Financial Statistics* and as used by the Department for factors of production surrogates in numerous prior PRC cases, is more appropriate for purposes of this administrative review.

(c) Chemical Valuation

Comment 5: The respondents argue that the Department incorrectly calculated the tax-exclusive price for sulphuric acid. The respondents claim that Indian excise and sales taxes are assessed sequentially, a fact the Department has acknowledged in other cases, and that this should be accounted for in the calculation of tax-exclusive prices for this chemical.

Moreover, the respondents argue that we did not properly exclude the non-market economy imports from the *Import Statistics* used to value liquid ammonium. The respondents point to other cases where the Department has explicitly excluded the imports of these countries when deriving surrogate values.

The petitioners have no comment.

Department's Position: We agree with the respondents that our calculation for excluding taxes from the sulphuric acid surrogate value was incorrect in our preliminary results. For these final results, we have corrected this calculation so that it is consistent with the Department's established formula for deriving tax-exclusive Indian surrogate values, as articulated in *Chrome Plated Lug Nuts from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 53872, 53874 (October 7, 1998).

Likewise, the respondents are correct regarding our practice of excluding non-market economy imports from the trade data used as surrogate values. We have revised our liquid ammonium surrogate value in these final results accordingly.

Comment 6: In our preliminary results, we valued selenium dioxide using a 1998 price quotation from an Indian selenium manufacturer. The respondents argue that we should use the Indian import statistics they submitted to value the input because the import statistics are publicly-available published information.

The petitioners argue that the Department used the correct surrogate value in the preliminary results. The value in the Indian import statistics is for selenium, the petitioners note, whereas the manufacturer's price quotation is for selenium dioxide, the input actually used by the respondents.

Department's Position: We agree with the petitioners that the 1998 price quotation used in our preliminary results is the best available surrogate value because it is for the actual chemical used by the respondents. The value in the *Import Statistics* preferred by the respondents is for selenium, not selenium dioxide.

Moreover, the regulations at section 351.408(c)(1) state that the Department ''will normally use publicly available information to value factors.'' In prior segments of this proceeding, as well as in numerous other proceedings, the Department has used price quotations to value production factors. As discussed above, for instance, we have used a price quotation submitted by the respondents to value ore 1 in these final results. *See Normal Value* section above. We, therefore, have continued to value selenium dioxide in these final results using this price quotation.

Comment 7: The respondents argue that the Department misunderstood the information they submitted regarding the concentration of the SDD chemical used in the production of the respondents' merchandise. In the preliminary results, the Department used a price quotation from an Indian chemicals producer for SDD with a 40 percent purity. We then adjusted this price to account for the fact that the reported purity of the SDD actually used by the respondents was significantly different. The respondents claim that all standard SDD has a purity level of 40 percent, and that the respondents' reported purity level should be interpreted as a percentage of the 40 percent.

The petitioners counter that the information on which the respondents base their arguments was first submitted on the record by the respondents with their case brief, well after the deadline for new factual information. Moreover, the petitioners continue, it is not clear that the information in the affidavit, provided by the respondents in support of their argument, pertains to the type of SDD used by the PRC manganese metal producers. Nor does it appear, the petitioners note, that the manganese

[13] *See Memorandum to the Case File from Andrew Covington; Research into Center for Monitoring Indian Economy* (August 31, 1999), a copy of which is available in the Department's Central Records Unit.

metal producer certified these facts supplied by the respondent.

Department's Position: We have not revised our adjustment to the SDD surrogate value for these final results. In the Department's June 12, 1998 initial questionnaire, we asked the respondents' to report ''the chemical composition/purity for each raw material input * * *'' and, in our subsequent August 21, 1998 supplemental questionnaire we asked them to confirm the correct composition of their SDD input. In our preliminary results, we used the purity level as reported and confirmed by the respondents.

Although the respondents had ample opportunity to clarify or revise any misleading or incorrect information in their responses within the regulatory deadlines for factual information, it was not until their April 16, 1999 case brief that the respondents submitted additional factual information regarding purported standard purity levels for this chemical. In a May 18, 1999 letter to the respondents' counsel, the Department informed the respondents that this portion of the case brief contained untimely filed, new factual information which would be removed from the record of this review.

Therefore, for these final results, we have continued to adjust the SDD surrogate value to reflect the SDD purity level as reported in the respondents' questionnaire and supplemental responses.

(d) Overhead, SG&A and Profit

Comment 8: The respondents argue that the Department should include the labor and labor benefit items, such as the ''Provident Fund'' and ''Employees Welfare Expense,'' in the cost of manufacture before calculation of overhead, SG&A and profit ratios. The respondents cite an accounting textbook that states that, ''* * * a labor-intensive firm—a firm whose operations are performed manually and only incidentally by machines—should use a labor-oriented base * * *'' in making labor-exclusive overhead allocations.'' Citing several past cases, the respondents claim further that the standard Department practice is to include such expenses in the COM for determining the overhead, SG&A and profit ratios.

Furthermore, the respondents argue that the fact that the Department adopted an approach similar to that used in the preliminary results in calculating labor-exclusive overhead and SG&A ratios in *TRBs–10* [14] is irrelevant to this proceeding because the surrogate values used in *TRBs–10* were from a different source and because the methodology in *TRBs–10* was an exception to the Department's normal practice.

The petitioners counter by first noting that, contrary to the respondents' assertion, the Department did include labor costs in its calculation of a surrogate profit percentage. The petitioners continue by stating that it was appropriate for the Department to exclude all labor from the calculation of overhead and SG&A surrogate percentages because the Department separately had valued all labor, including direct and indirect factory labor and SG&A labor. Had the Department not excluded all labor from the numerator and denominator in calculating factory overhead and SG&A expense ratios, certain labor costs would have been double-counted. Rather, the Department's approach in the preliminary results was consistently applied and appropriate given the level of detail on the record of the respondents' reported labor costs.

Moreover, continue the petitioners, the respondents' quotation from the accounting text is irrelevant in this instance. In looking at the context of the quotation, the petitioners argue that the text deals with the cost-accounting issue of allocation of factory overhead costs among multiple products. Given that this review involves non-market economy producers, producers costs are irrelevant and no allocation among different products is being made.

Finally, the petitioners argue, the overhead and SG&A ratios in this case are based on Indian, and not PRC, production experience. Although the amount of labor hours incurred in different countries in the production of a unit of given merchandise may vary significantly, the amounts of raw materials and energy consumed per unit of output is generally more uniform. Therefore, the petitioners claim that it is appropriate to use a labor-exclusive basis for calculating the surrogate overhead and SG&A percentages in one country that will be used to derive production costs in a different country.

Department's Position: We believe that the calculation of labor-exclusive surrogate overhead and SG&A percentages is appropriate and reasonable. To start, we note that our calculation of the profit surrogate ratio fully includes all labor costs in the numerator and denominator. We have excluded all labor costs from our calculation of overhead and SG&A ratios, however, to increase the accuracy and specificity of our valuation of the respondents' costs of production. In particular, we have the somewhat unusual benefit in this case of having reported total unit labor inputs (broken down into direct, factory overhead and SG&A labor categories). We therefore have valued the total unit labor costs of the PRC producers by multiplying the total unit labor inputs by the surrogate wage rate. In many past cases, only direct labor was reported and, therefore, overhead and SG&A labor was subsumed within the general surrogate percentages for the overhead and SG&A cost categories.

Given that we are valuing overhead and SG&A labor directly based on the respondents' reported factors, we have excluded all labor (from both the numerator and denominator) in calculating surrogate ratios for the remaining overhead and SG&A costs. Likewise, we have excluded all labor components from the respondents' direct inputs cost base to which we apply these labor-exclusive surrogate overhead and SG&A ratios. As the petitioners point out, failure to do so would in this case overstate the respondents' total labor costs.

Turning to the respondents' other points, the passage in the accounting text cited by the respondents does not necessarily pertain to the facts of this case. First, it does not appear that the respondents' producer is a labor-intensive firm, ''whose operations are performed manually and only incidentally by machines.'' To the contrary, based on reported and verified information, the manufacture of manganese metal is technologically sophisticated, involving advanced equipment and machinery to support complex chemical and electrolytic processes. Labor, therefore, would not appear to be the central input driving the overhead and SG&A cost structure of the producer.

Moreover, we agree with the petitioners' argument that the cited passage is referring to the allocation of factory overhead costs among multiple products. The issue at hand, however, is the appropriate means of estimating the costs of certain producers (the PRC manganese metal manufacturers) based on the relative size of certain costs to the total cost structure of other producers (Indian chemicals and metals manufacturers).

[14] *Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 1996–97 Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 63 FR 63842 (November 17, 1998) (*TRBs–10*).

Furthermore, it is true that the overhead and SG&A ratios in *TRBs–10* were based on the reported costs of particular Indian TRBs producers whereas the overhead and SG&A surrogates in this review are based on the aggregated data of Indian chemicals and metals producers generally as published by the Reserve Bank of India. It is important to note, first, that these two sources are not that dissimilar given that the aggregate data presumably incorporates the experiences of individual producers. Any differences between the surrogates, however, are beside the point. Whether or not to exclude labor in deriving overhead and SG&A ratios is a methodological issue specific to each case which depends on whether and to what extent the Department must adjust and manipulate the surrogate data to derive cost estimates that best reflect the production costs in the respondents' country.

Therefore, for the reasons above, we have continued to derive labor-exclusive overhead and SG&A surrogate ratios for these final results.

Comment 9: To value the respondents' factory overhead, SG&A and profit in the preliminary results, we calculated surrogate ratios based on financial data reported in the *Reserve Bank of India Bulletin* (*RBI Data*). Subsequent to the preliminary results, the petitioners submitted data published by the *Center for Monitoring Indian Economy* (*CMIE Data*) regarding factory overhead, SG&A and profit of Indian nonferrous metals producers. The petitioners argue that we should use the *CMIE Data* to value these costs because the Department's established practice is to base surrogates upon the industry experience closest to the producer under investigation. The petitioners suggest that the *CMIE Data* which is specific to Indian nonferrous metals producers is more representative of manganese metal manufacture than the RBI data, which more broadly encompasses the ''processing and manufacture'' of ''metals, chemicals and products thereof.''

Moreover, the petitioners continue, the *RBI Data* pertains to the period 1992–93, whereas the *CMIE Data* reports financial information for 1996–97 and is, therefore, more contemporaneous with the POR. The petitioners thus conclude that the *CMIE Data* is a more appropriate basis for deriving surrogate ratios for overhead, SG&A and profit.

The respondents disagree that the *CMIE Data* is the most appropriate surrogate source for these expenses for several reasons. First, this source has never been used by the Department in other PRC cases to value these expenses whereas the Department has relied upon the *RBI Data* as a basis for valuing overhead, SG&A and profit. To support this contention, the respondents cite to several past proceedings and note that, in several cases, the surrogates in earlier segments were based on other sources but that in the more recent segments of those proceedings the Department relied on the *RBI Data*.

The respondents also maintain that, contrary to the claims of the petitioners, the *CMIE Data* is not specific to nonferrous metals producers, but rather, according to the notes accompanying the data, includes information for a wide variety of non-metals related manufacturers (*e.g.*, food products, fertilizers, chemicals). Moreover, the respondents continue, this data appears to encompass ''central government public sector'' companies as well as companies with an indeterminate volume of sales.

Department's Position: We have continued to use the *RBI Data* in these final results to derive surrogate factory overhead, SG&A and profit ratios. The Department has used this source of data to value these expenses in all previous segments of this proceeding as well as in numerous other PRC cases.

The petitioners' proposed data is based on the same source as their electricity-specific Indian WPI discussed in *Comment 4* above. Given that the Department has not examined this information in prior proceedings, and given that the publisher of this data appears to be a private research organization rather than a government agency, we attempted to analyze the methodology used to collect, synthesize and report this data. Although we do not necessarily agree with the inferences regarding industry coverage the respondents draw from CMIE's notes on its sampling methodologies, we find, nevertheless, that there is insufficient information on the record to confirm the accuracy, objectivity, and breadth of coverage (*i.e.*, the extent to which the data reflects the financial experience of companies across all of India) of the data presented.

This paucity of background and explanatory information for the *CMIE Data* is especially worrisome in light of the fact that, as the petitioners note, several further adjustments must be made to the reported data so that it comports with the standard definitions and methodology underlying the Department's surrogate overhead, SG&A and profit calculations. For instance, in their proposed calculation of a factory overhead rate, the petitioners estimated certain expense line items, which were not reported individually in the *CMIE Data*, based on allocation ratios derived from data in a separate publication. Given that we know so little about how this data is collected, aggregated and reported, it is not clear that deriving allocation ratios based on the information in one publication to adjust the data from a different publication is methodologically correct and reasonable.

Therefore, considering the uncertainty surrounding this data, we find that the continued use of the *RBI Data*, as used by the Department for valuing surrogates in numerous prior PRC cases, is more appropriate for the purposes of this administrative review.

(e) Freight Valuation

Comment 10: In the preliminary results, we valued inland rail freight using Indian rail rates reported in an August 13, 1997 ore price quotation from an Indian manganese mine. The petitioners argue that manganese metal is packed in drums or closed containers whereas manganese ore is shipped in open rail cars and, therefore, rates quoted for ore transportation are not representative of manganese metal freight costs. Instead, the petitioners contend, the Department should rely on rates published by the Indian Railway Conference Association (IRCA), as contained in the petitioners' March 29, 1999 submission. According to the petitioners, this surrogate source for rail freight has been used by the Department in several other cases for valuing the costs of rail transportation of finished metals such as manganese metal.

The respondents counter [15] that the petitioners' proposed surrogate rail rates are inappropriate because (1) they came into effect only after the POR and (2) the rates do not apply to the respondents' reported freight distances.

Department's Position: We agree with the petitioners that the IRCA data is a more accurate surrogate source for rail freight. In choosing among alternative surrogate values, we select the one that, *inter alia*, most broadly represents the cost of the input across the surrogate country. The surrogate rail values used in our preliminary results were based on the rates offered by one Indian ore producer, whereas the IRCA data provided by the petitioners represents rates widely available throughout India, as published with the authority of the central Indian government.

It is true that, all other things being equal, the Department will normally

[15] Based on the context of the comment, the respondents appear to be addressing the petitioners' proposed rail freight although the actual text of respondents' comment refers to ''truck rates.''

choose the surrogate value most contemporaneous with the POR. In this instance, however, the IRCA values came into effect only roughly five months after the POR. Moreover, although the IRCA data submitted by the petitioners does not correspond to the reported rail distances for the respondents' factor inputs, the data does correspond to the distances reported for the rail transportation of the respondents' end product. The input freight costs are inconsequential relative to the costs of transporting inland the manganese metal. We note that the surrogate value used in the preliminary results and favored here by the respondents did not directly correspond to the reported transportation distances of either the input factors or the manufactured manganese metal.

Finally, we note that the IRCA data has been used in other recent cases by the Department to value PRC rail freight rates.[16] Therefore, weighing all of the above considerations, we find that the IRCA data is the most appropriate surrogate source for valuing the respondents' rail freight costs, and have revised the calculations for these final results accordingly.

Comment 11: The respondents claim that the Department's decision to apply facts available to value ocean freight was unreasonable and ungrounded and that the Department should use CMIECHN/CNIECHN's reported information to value ocean freight in these final results. The respondents argue that although the bills of lading reviewed at verification did not show freight charges, they are otherwise accurate and complete, and can be tied to CMIECHN/CNIECHN's expense ledgers and audited financial statements which show the applicable freight charges. Additionally, the respondents state that it is not reasonable to disregard CMIECHN/CNIECHN's international freight information on the basis that the payments for this service were made through a local Chinese agent. The respondents point out that foreign freight forwarders must hire local agents to handle billing if that company is not locally registered. However, if the Department determines that it should continue to apply facts available for ocean freight, the respondents argue that it should calculate a more reasonable surrogate value based on price quotations from a sample of international forwarding companies.

The petitioners contend that the Department should reject the respondents' argument because CMIECHN/CNIECHN was unable to support at verification its claim that it purchased ocean freight services from market-economy carriers and that there is no evidence that the PRC companies from which CMIECHN/CNIECHN purchased ocean freight acted merely as agents for the market-economy carriers, rather than PRC resellers of ocean freight services.

The petitioners argue, citing to 19 U.S.C. 1673b(c) of the Act, that the Department cannot use the ocean freight information provided by the respondents because transactions between NME entities are presumed to be distorted and unuseable for purposes of calculating a dumping margin. The petitioners point out that the Department will normally determine ocean freight using the actual amounts paid by NME entities to market-economy shippers; however, in situations where the NME exporter purchased the ocean freight services from an NME entity, the Department must use a surrogate value. In *Saccharin*,[17] note the petitioners, the Department rejected the use of an actual freight cost, as directed by the statute, because those costs were purchased from a domestic supplier in an NME.

The petitioners further argue that the fact that CMIECHN/CNIECHN paid rates to NME entities that are well below surrogate rates is evidence that it did not pay market-determined rates.

Department's Position: We agree with the petitioners that CMIECHN/CNIECHN was unable to support its claim that it purchased ocean freight services from market-economy carriers. Furthermore, the respondents have not supplied evidence that the PRC agents from which CMIECHN/CNIECHN allegedly purchased ocean freight acted as agents for the market-economy carriers, rather than as PRC resellers of ocean freight services. At verification, the Department reviewed ocean freight documentation for the majority of CMIECHN/CNIECHN's sales. Ultimately the verification team could not determine that the ocean freight CMIECHN/CNIECHN reported as supplied by a market-economy carrier was, in fact, supplied by a market-economy carrier. Furthermore, the bills of lading did not tie to the other documentation pertaining to the ocean freight costs nor did they tie to the company's accounting records. Additionally, there was no evidence that CMIECHN/CNIECHN purchased ocean freight directly from the market-economy carrier. Therefore, in these final results the Department has continued to value CMIECHN/CNIECHN's ocean freight costs using a surrogate freight rate. With regard to the respondents' arguments regarding which surrogate value we should use for ocean freight, see the following comment.

Comment 12: The petitioners state that, consistent with the Department's established practice of using the most specific surrogate data available, the Department should rely on the ocean freight values submitted by the petitioners subsequent to the preliminary results, since these values are both route- and product-specific. The petitioners contend that the ocean freight surrogates used in the preliminary results are not as accurate because they are based on averages of quoted rates to the U.S. east and west coasts freight rates, taken from *TRBs–9*[18] and adjusted using the U.S. producer price index. The petitioners maintain that the freight quotations they provided are specific to manganese metal and are specific to the actual routes and destinations, as reported by the respondents, to which the subject merchandise was shipped.

The respondents counter that if the Department uses a surrogate to value ocean freight in these final results, the Department should continue to use the surrogate source used in the preliminary results. The petitioners' preferred surrogate rates, the respondents claim, should be disregarded as aberrational because these rates increased in excess of inflation over a three-year period. Furthermore, the respondents note, the petitioners' rate quotes were in effect only after the POR. Moreover, the respondents note that the petitioners' quotations are not publicly available published information.

Department's Position: We have continued to use the surrogate rates used to value ocean freight in the preliminary results. Although the petitioners' rates appear to be closer to (though still not contemporaneous with) the POR than those used in our preliminary results, the petitioners surrogate information, in its entirety, was submitted as proprietary data. As stated in the Department's response above to the comment regarding selenium dioxide surrogate values, the regulations at section 351.408(c)(1) state that the Department ''will normally use

[16] *See, e.g., TRBs–10.*

[17] *Final Determination of Sales at Less Than Fair Value; Saccharin from the People's Republic of China*, 59 FR 58818, 58825 (November 15, 1994).

[18] *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 36764 (July 9, 1997) (*TRBs–9*).

publicly available information to value factors.'' In this instance, the petitioners' ocean freight rate quotations do not constitute publicly available information.

Moreover, there is no information on the record that suggests the rates used in *TRBs–9*, as supplied by the same shipping company that supplied the petitioners' rates, are not applicable to the shipment of manganese metal. Therefore, because the *TRBs–9* rates are publicly available information, and because there is no reason to believe they are not representative of the costs of shipping manganese metal, we have continued to use these rates as a surrogate for valuing ocean freight in these final results.

(f) Packing Material Valuation

Comment 13: The petitioners claim that the *Import Statistics* used by the Department as surrogate values for plastic bags and wooden pallets are based on imports that pre-date the POR. The petitioners argue that the Department should rely on the data submitted by the petitioners subsequent to the preliminary results to value plastic bags and pallets because this import data, for the period June 1997 through October 1997, is contemporaneous with the POR.

The respondents agree with the Department's choice of surrogates in the preliminary results for packing materials.

Department's Position: We agree with the petitioners. We have reviewed the *Import Statistics* used in the preliminary results to value plastic bags and wooden pallets and note that, although these *Import Statistics* cover Indian imports in general through the initial months of the POR, there appear not to have been POR imports within the particular product categories relevant to the packing materials in question. The more recent *Import Statistics* submitted by the petitioners subsequent to the preliminary results, however, report POR imports for these particular product categories. Therefore, in these final results we have based our valuation of plastic bags and wooden pallets on these more recent *Import Statistics.*

(4) Valuation of By-Product Credit

Comment 14: To value the ''positive mud'' generated as a by-product in manganese metal manufacture, we have used the 82–84 percent manganese dioxide ore price published in the *Indian Minerals Yearbook* (IMY). The respondents argue that this IMY 82–84 percent ore is an incorrect surrogate value, for several reasons. First, positive mud is not an ore, but a by-product resulting from the electrolytic processing of MnO2 ore. Therefore, the respondents reason, a product resulting from the transformation of the ore cannot be considered to be the ore itself. Rather, the resulting product should command a higher price than the ore. However, the IMY 82–84 percent ore surrogate value the Department used for positive mud was ''at an almost 100 percent lower price'' than the surrogate the Department used to value the respondents' ''ore 2'' input.

According to the respondents, the IMY 82–84 percent manganese dioxide ore surrogate value is clearly aberrational and should be disregarded. This finding would be consistent with the Department's practice in the *LTFV Investigation* where, according to the respondents, to value this by-product the Department used manganese dioxide but not manganese dioxide ore. Therefore, conclude the respondents, in these final results the Department should use a value for electrolytic manganese dioxide (EMD) to value positive mud.

The petitioners counter that the IMY 82–84 percent manganese dioxide ore price used in the preliminary results is a proper surrogate. The petitioners note that respondents did not provide detailed information specifying the full metallurgical content of the positive mud. And, in fact, the only specification the respondents did provide'the manganese oxide content'was roughly comparable to that of the IMY 82–84 percent surrogate.

According to the petitioners, the respondents' argument that, based on reported differences in manganese contents, the value of the positive mud surrogate value should be almost double the value of the ore 2 surrogate value, is mistaken and is based on confusion in understanding the reported metallurgical composition; the content of the positive mud is stated as a percentage of manganese dioxide whereas the content of the ore 2 surrogate is stated in terms of manganese (only). The petitioners state that the IMY 82–84 manganese dioxide ore is an appropriate surrogate for positive mud precisely because the MnO2 content is the only specification reported by the respondents for the positive mud. The MnO2 content is known for the 82–84 percent ore but not known for the ore 2 surrogate value. Using the IMY 82–84 percent surrogate enables the Department to make the appropriate adjustments to the surrogate price to reflect the actual MnO2 content of the positive mud.

Finally, the petitioners conclude, electrolytic manganese dioxide (EMD) prices should not be used as a surrogate value for positive mud because EMD is a high-value product used mainly in the production of dry-cell batteries, and was specifically rejected by the Department as a surrogate in the first administrative review in this proceeding.

Department's Position: As suggested by the parties' comments, we have considered this issue in prior segments of this proceeding. As in the first administrative review, we disagree with the respondents' contention that the IMY 82–84 percent manganese dioxide ore is an inappropriate surrogate for valuing positive mud. In the *First Review Results* we stated,

> The Department disagrees with the respondents' argument for the use of EMD as a surrogate value. First, the respondents are incorrect in stating that the Department used for a by-product surrogate in the *LTFV Investigation* an Indian import value for manganese dioxide excluding ores. In the LTFV Final Determination, the Department used an 82–84 percent MnO2 peroxide ore, as listed in the 1993 *Indian Minerals Yearbook*, to value the respondents' by-product credit. EMD is a very high-valued product used mainly in the production of dry-cell batteries * * * The respondents have not sufficiently demonstrated that the PRC by-product is of the same rigorous specifications as EMD.
>
> The respondents have demonstrated, however, that their by-product does have some resale value. In lieu of any information on the Indian value of the actual by-product in question, the Department is maintaining the methodology used in the *LTFV Final Determination* of using for a surrogate the price of high-valued Indian manganese dioxide ore. (63 FR at 12448).

Moreover, we find the respondents' comparison of the surrogate value for positive mud with the surrogate value for ore 2 to be misplaced. The respondents reason that the value of a by-product must be greater than the value of an input from which the by-product was generated. However, a by-product (as distinct from a co-product) is something that is generated incidentally in the course of manufacturing some primary finished good, in this case manganese metal. The fact that the respondents' by-product happens to have some residual value does not require that value to be greater than the value of the ore used in the manufacturing process.

The respondents imply that our choice of a lower-valued by-product surrogate suggests value destruction, which occurs when the value of the inputs is greater than the value of the final product. This is not the case. The value created in this manufacturing

process is captured in the price of the primary product—manganese metal—and is fully recoverable, under normal market conditions, in the sale of that product. Any value recovered from the sale of the by-product merely serves to offset the production costs incurred in the production of the primary product. We, therefore, have not changed our choice of the positive mud surrogate value for these final results.

Final Results of the Review

We hereby determine that the following weighted-average margins exist for the period February 1, 1997, through January 31, 1998:

Exporter	Margin (percent)
CMIECHN/CNIECHN	4.30
HIED	143.32

Because we are rescinding the review with respect to CEIEC and Minmetals, the respective company-specific rates for these exporters remain unchanged.

Assessment and Cash Deposit Rates

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs.

In order to assess duties on appropriate entries as a result of this review, we have calculated entry-specific duty assessment rates based on the ratio of the amount of duty calculated for each of CMIECHN/CNIECHN's verified sales during the POR to the total entered value of the corresponding entry. The Department will instruct Customs to assess these rates only on those entries which correspond to sales verified by the Department as having been made directly by CMIECHN/CNIECHN. The Department will also instruct Customs to liquidate all POR entries by bona fide third-country resellers at rates equal to the cash deposit rate required at the time of their entry.

On all remaining entries that entered under CMIECHN/CNIECHN's cash deposit rate, the Department will instruct Customs to assess the PRC-wide rate of 143.32 percent. The Department will likewise instruct Customs to assess the facts available rate, also 143.32 percent, on all POR entries which entered under HIED's cash deposit rate.

Moreover, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For HIED and CMIECHN/CNIECHN, the cash deposit rate will be the rates for these firms established in the final results of this review; (2) for Minmetals and CEIEC, which we determined to be entitled to a separate rate in the *LTFV Investigation* but which did not have shipments or entries to the United States during the POR, the rates will continue to be 5.88 percent and 11.77 percent, respectively (these are the rates which currently apply to these companies); (3) for all other PRC exporters, all of which were found not to be entitled to a separate rate, the cash deposit rate will continue to be 143.32 percent; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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 double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 7, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23777 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–605]

Industrial Phosphoric Acid From Israel: final results and partial recission of countervailing duty administrative review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial recission of Countervailing Duty administrative review.

SUMMARY: On May 7, 1999, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on industrial phosphoric acid (IPA) from Israel for the period January 1, 1997 through December 31, 1997 (64 FR 24582). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Sean Carey, Office of CVD/AD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3208 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Rotem-Amfert Negev Ltd. (Rotem) and Haifa Chemicals Ltd. (Haifa). Haifa did not export the subject merchandise during the period of review (POR). Therefore, in accordance with section 351.213(d)(3) of the Department of Commerce's (the Department) regulations, we are rescinding the review with respect to Haifa. This review also covers eleven programs.

Since the publication of the preliminary results, the following events have occurred. We invited interested parties to comment on the preliminary results. On June 7, 1999 case briefs were filed by both petitioners (FMC Corporation and Albright & Wilson Americas Inc.) and respondents (the Government of Israel (GOI) and Rotem-Amfert Negev, the producer/exporter of IPA to the United States during the review period). On June 11, 1999, respondents filed a rebuttal brief; petitioners filed a rebuttal brief on June 14, 1999.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round

Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351 (1998), unless otherwise indicated.

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

Subsidies Valuation Information

Period of Review

The period for which we are measuring subsidies is calendar year 1997.

Allocation Period

In *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, a methodology that was articulated in the *General Issues Appendix* appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217 (July 9, 1993) (*GIA*). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies is a company-specific average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel plc.* v. *United States*, 929 F.Supp 426, 439 (CIT 1996) (*British Steel II*).

However, in administrative reviews where the Department examines non-recurring subsidies received prior to the period of review (POR) which have been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not practicable to reallocate those subsidies over a different period of time. Where a countervailing duty rate in earlier segments of a proceeding was calculated based on a certain allocation period and resulted in a certain benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant.

In this administrative review, the Department is considering non-recurring subsidies previously allocated in earlier administrative reviews under the old practice, non-recurring subsidies also previously allocated in recent administrative reviews under the new practice, and non-recurring subsidies received during the instant POR. Therefore, for purposes of these preliminary results, the Department is using the original allocation period of 10 years assigned to non-recurring subsidies received prior to the 1995 administrative review (the first review for which the Department implemented the *British Steel I* decision). For non-recurring subsidies received since 1995, Rotem has submitted, in each administrative review including this one, AUL calculations based on depreciation and asset values of productive assets reported in its financial statements. In accordance with the Department's practice, we derived Rotem's company-specific AUL by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to depreciation for a 10-year period. In the current review, this methodology has resulted in an AUL of 23 years; thus, non-recurring subsidies received during the POR have been allocated over 23 years.

Privatization

Israel Chemicals Limited (ICL), the parent company which owns 100 percent of Rotem's shares, was partially privatized in 1992, 1993, 1994, and 1995. In this administrative review, the Government of Israel (GOI) and Rotem reported that additional shares of ICL were sold in 1997. We have previously determined that the partial privatization of ICL represents a partial privatization of each of the companies in which ICL holds an ownership interest. *See Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel*, 61 FR 53351, 53352 (October 11, 1996) *(1994 Final Results).* In this review and prior reviews of this order, the Department found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations. Further, the Department found that a portion of the price paid by a private party for all or part of a government-owned company represents partial repayment of prior subsidies. *See GIA*, 58 FR at 37262. Therefore, in 1992, 1993, and 1995 reviews, we calculated the portion of the purchase price paid for ICL's shares that went toward the repayment of prior subsidies. In the 1994 privatization, less than 0.5 percent of ICL shares were privatized. We determined that the percentage of subsidies potentially repaid through this privatization could have no measurable impact on Rotem's overall net subsidy rate. Thus, we did not apply our repayment methodology to the 1994 partial privatization. *See 1994 Final Results*, 61 FR at 53352. However, we are applying this methodology to the 1997 partial privatization because 17 percent of ICL's shares were sold. This approach is consistent with our findings in the *GIA* and Department precedent under the URAA. *See e.g., GIA*, 58 FR at 37259; *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377 (November 14, 1996); *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288 (June 14, 1996).

Discount Rates

We considered Rotem's cost of long-term borrowing in U.S. dollars as reported in the company's financial statements for use as the discount rate used to allocate the countervailable benefit over time. However, this information includes Rotem's borrowing from its parent company, ICL, and thus does not provide an appropriate discount rate. Therefore, we considered ICL's cost of long-term commercial borrowing in U.S. dollars in each year from 1984 through 1997 as the most appropriate discount rate. ICL's interest rates are shown in the notes to the company's financial statements, public documents which are in the record of this review. *See Comment 9* in the *1995 Final Results.*

Analysis of Programs

Based upon the responses to our questionnaire and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Encouragement of Capital Investments Law (ECIL)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to modify our calculations for this program from the preliminary results. Accordingly, the net subsidy for this

program remains unchanged from the preliminary results and is as follows:

[Percent ad valorem]

Manufacturer/exporter	Rate
Rotem Amfert Negev	5.43

B. Infrastructure Grant Program

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program remains unchanged from the preliminary results and is as follows:

[Percent ad valorem]

Manufacturer/exporter	Rate
Rotem Amfert Negev	0.22

II. Programs Found to be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Encouragement of Industrial research and Development Grants (EIRD)
2. Environmental Grant Program
3. Reduced Tax Rates under ECIL
4. ECIL Section 24 Loans
5. Dividends and Interest Tax Benefits under Section 46 of the ECIL
6. ECIL Preferential Accelerated Depreciation
7. Exchange Rate Risk Insurance Scheme
8. Labor Training Grants
9. Long-Term Industrial Development Loans

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: The Privatization Calculation

Respondents contend that the Department's privatization calculation is incorrect and should be corrected in two areas: the numerators used in the ratios which are averaged to calculate the ''gamma'' should include all of the subsidies received by Rotem over the years; and, the gamma itself is understated because the numerators contain only the grants received in a given year, while the denominators are accumulated values in that they contain Rotem's net worth in each year (*i.e.*, net worth is, by definition, the accumulation of a company's financial results since its inception), resulting in a ratio of apples to oranges.

Respondents note that in calculating the ''gamma'' used in the privatization calculation, the Department did not include in the numerators the subsidies received by Rotem arising from ECIL grants to projects 8, 12, and 13. Respondents note that although grants to projects 12 and 13 were fully countervailed in prior administrative reviews, Rotem nevertheless reported these grants so the Department could include them in the gamma calculation. However, the Department failed to include these grants in the gamma numerators in the relevant years, and did not include any grants to project 8 in the gamma numerators, presumably because of the earlier finding that grants to project 8 do not benefit IPA production. Respondents argue that in calculating gamma, the Department is not seeking to determine the level of countervailable subsidization, but rather the level of total subsidization, relative to a company's net worth. Respondents cite the final results of the prior administrative review, where the Department stated that the ''gamma calculation serves as a reasonable historic surrogate for the percentage of subsidies that constitute the overall value (*i.e.* net worth of the company) at a given point in time,'' (64 FR at 2884) and argue that the only way the gamma can be an accurate historic surrogate is if *all* the subsidies received are included in its calculation. Respondents note that the Department rejected this argument in the previous administrative review, and urge the Department to reconsider its position. *See Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel*, 64 FR 2879 (January 19, 1999) *(1996 Final Results).*

Respondents also argue that the numerators and the denominators used in calculating the gamma are not consistent in that the value of the denominators, Rotem's net worth in each of the relevant years is, by definition, an accumulated value, while the value the Department uses in the numerators, the value of the subsidies in the same year, is not an accumulated value. Respondents argue that the Department should correct this methodological error by using a value in the numerator which represents the accumulated value of the subsidies in the relevant year.

Respondents note that in both the 1996 and the 1995 administrative reviews, the Department rejected this argument. In the 1995 review, the Department reasoned that respondents had ignored the fact that the value of the subsidies is eroding over time. *See 1995 Final Results.* Respondents further note that in the 1996 review, the Department took the position that respondents incorrectly assumed ''that the company's net worth increased in direct proportion to the value of the subsidies received by the firm.'' 64 FR at 2884. Respondents now argue that the Department's 1995 conclusion ignores the fact that the net worth of the company is also eroding to a comparable degree as a result of the depreciation of the company's assets (that is, but for additional capital infusions, some of which are subsidies included in the gamma numerator which increase the company's net worth, the net worth would also decline over time, just as the subsidies do). This depreciation of assets (which is manifest in the denominator), according to respondents, offsets the erosion of the subsidies (manifest in the numerator) over time. Respondents also argue that the Department's 1996 reasoning ignores the fact that the grants to Rotem were ''capital infusions'' used by Rotem to build infrastructure, illustrating that, contrary to the Department's conclusion, Rotem's equity is increasing as a result of the grants, in direct proportion to their value. Finally, respondents argue that the Department's privatization calculation methodology is internally inconsistent because the Department does not accumulate the subsidies to calculate the gamma, but does so to calculate the percent of subsidies repaid: the net present value (NPV) used in the privatization formula is nothing more than the subsidies accumulated, based on a ten year, declining benefit stream. Thus, respondents argue, the subsidies are being accumulated for the ''percent repaid'' calculation, but are not being accumulated for the gamma calculation. According to respondents, either both should be accumulated or neither should be accumulated.

Petitioners note that respondents make two now familiar attacks on the Department's privatization methodology. Petitioners contend that the Department has properly rejected these arguments in the past two administrative reviews of this order. With respect to including all, rather than just countervailable subsidies in the gamma numerators, petitioners argue that this would lead to the absurd result of requiring the Department to investigate all subsidies, regardless of their countervailability, to construct an

appropriate privatization calculation. With respect to respondents' arguments about the mismatch between the gamma numerators and denominators, petitioners urge the Department to continue to apply the sound reasoning applied in the two previous administrative reviews.

Department's Position

The Department has considered respondents' arguments with respect to the privatization methodology in the last two administrative reviews of this countervailing duty order. *See 1995 Final Results; 1996 Final Results.* We continue to believe that these arguments are without merit. First, the Department does not calculate a benefit from subsidies which have been fully countervailed, or subsidies that are not countervailable because they do not benefit the subject merchandise. Therefore, the Department's privatization methodology does not address the repayment of such subsidies. After calculating the gamma, and therefore determining the portion of the purchase price which ''repays'' past subsidies, that portion of the purchase price is deducted from the net present value of the remaining benefit stream of all non-recurring subsidies that are being countervailed. If all subsidies were included in the gamma numerator, the net present value calculation would also have to include all other subsidies, even if they were found not to benefit the production of subject merchandise, or if they have already been fully countervailed. Accepting respondents' arguments would require the Department to monitor and allocate over time even subsidies which were found non-countervailable, in the event that a company were to experience a change in ownership at some time during the administration of a countervailing duty order. This practice could give rise to many unintended consequences, including increasing respondents' burden of complying with the countervailing duty law, and allowing the parties to continue to address issues relating to a program's countervailability, regardless of earlier findings.

Second, we reject respondents' argument that the Department's privatization methodology is inconsistent by virtue of the gamma denominator representing accumulated net worth and the gamma numerator not representing the accumulated value of subsidies received over time. Thus, we reject respondents' conclusion that the methodology assumes that the benefits of a subsidy disappear at the end of the year of receipt. As we stated in the *1995 Final Results* and the *1996 Final Results,* the gamma calculation attempts to determine the portion of the company's net worth which is comprised of subsidies in the year prior to privatization. Once again, we believe that respondents' proposal to compare the accumulated value of a company's subsidies in the year before privatization to the company's net worth in that year would overstate the value of the subsidies in relationship to the company's net worth by assuming that a company's net worth increases in direct proportion to the value of the subsidies received by that firm. Moreover, as we stated in the last administrative review, a company's net worth is not increasing in direct proportion to the value of the subsidies received because the value of the subsidies is eroding over time. *See 1996 Final Results.*

We also reject respondents' suggestion that the Department either remove the net present value element from the ''percent repaid'' calculation or add it to the gamma calculation (by accumulating the subsidies). This suggestion might have merit if our gamma methodology only considered the subsidies to net worth ratio in the year prior to privatization in isolation. However, the gamma looks at ten years of data and averages those ten years, thus providing a historical context to the ratio of subsidies to net worth over time. In addition, we note that while the gamma itself does not factor in the net present value of past subsidies, the results of the gamma calculation are applied to the present value of the remaining benefit streams at the time of privatization. Thus, our current calculations, as a whole, do properly account for the present value of the remaining benefits at the time of privatization. *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat Rolled Carbon Quality Steel Products from Brazil,* 64 FR 38742 (July 19, 1999); *1996 Final Results.*

Finally, respondents have once again provided a Coopers & Lybrand report in support of their privatization methodology arguments and maintain that the Department's failure to accept this report in the last two administrative reviews indicates that the Department does not understand the arguments presented therein. As explained above, while the Department does appreciate the argument, we do not believe that it merits a change in our privatization methodology. This methodology aims, through the calculation of the gamma, to determine the percentage of subsidies that constitute the overall value (*i.e.*, net worth) of the company at a given point in time, and then to use that gamma to determine the portion of total subsidies which are repaid through the privatization transaction and the portion which remains with the company and continues to provide countervailable benefits. *See, GIA,* 58 FR at 37263, and *1995 Final Results,* 63 FR at 13635, 13636. This methodology has been accepted by the courts as a reasonable way to determine the impact of privatization on previously bestowed subsidies. *See Inland Steel Bar Co.,* v. *United Engineering Steels, Ltd.,* 155 F.3d 1370, 1374–75 (Fed. Cir. 1998) (the Court affirmed the Department's methodology for determining the amount of a subsidy that is repaid); *Saarstahl AG* v. *United States,* 177 F. 3d 1314 (Fed. Cir. 1999).

Comment 2: Rotem's AUL Calculation

Petitioners contend that the Department's calculation of Rotem's AUL is flawed in that it excludes a category of assets referred to as ''Furniture, vehicles, and equipment.'' Petitioners argue that it is inappropriate for the Department to accept Rotem's explanation that these assets should be excluded from the AUL calculation because they are not ''productive assets.'' Some of these assets are identified by Rotem as ''office equipment'' which, according to petitioners consists of computers and/or related software which may be essential to Rotem's production and operations; assets identified as ''vehicles'' could, petitioners maintain, be used in, or essential to, production and operations. Petitioners believe that the determination of what constitutes productive assets is a factual determination which the Department must make on a case-by-case basis; petitioners maintain that the record in this review does not contain the necessary factual information for this determination. Petitioners urge the Department to require Rotem to provide a detailed listing of the specific assets which comprise this category and their uses so that the Department can evaluate and petitioners can comment on whether they should be included in the AUL calculation.

Respondents note that it should be clear from the items enumerated that the category is intended for office-type assets. Productive assets are accounted for in the category ''facilities, machinery, and equipment,'' and respondents believe that the difference between productive and non-productive assets is clear from the accounting records.

Department's Position

We disagree with petitioners' argument that the category of Rotem's assets entitled ''furniture, vehicles, and office equipment,'' requires any further examination by the Department. Rotem complied with the Department's request and provided information from its audited financial statements for use in the Department's company-specific AUL calculations. We note that the verification reports from the 1995 administrative review, which were submitted on the record of the current review, discuss the calculation of Rotem's company-specific AUL and its components. The information discussed in these reports is consistent with the information that Rotem submitted during the current review. Therefore, because respondent submitted its AUL information in the manner that the Department requested and this information has previously been verified and tied to Rotem's audited financial statements, we find no reason to change the calculation of Rotem's AUL for these final results.

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy for Rotem to be 5.65 percent *ad valorem*.

We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993); *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See 1992/93 Final Results,* 61 FR at 28842. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice 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(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: September 7, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23776 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Final Results of Full Sunset Review: Sugar From the European Community

[C–408–046]

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Sugar From the European Community.

SUMMARY: On April 26, 1999, the Department of Commerce (''the Department'') issued the preliminary results of full sunset review of the countervailing duty order on sugar from the European Community (''the EC'') (64 FR 20257) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). We provided interested parties an opportunity to comment on our preliminary results. We received comments filed on behalf of domestic interested parties. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the ''Final Results of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, N.W., Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 13, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations'') and in 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Scope

The merchandise subject to this countervailing duty order is sugar, with the exception of specialty sugars (*e.g.*, cones, hats, pearls, loaves), from the European Community. Blends of sugar and dextrose, a corn-derived sweetener, containing at least 65 percent sugar are within the scope of this order. According to the final results of the Department's most recent administrative review, the merchandise subject to this order is currently classifiable under item numbers 1701.11.00, 1701.12.00, 1701.91.20, and 1701.99.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'') (*see* Sugar From the European Community; Final Results of Countervailing Duty Administrative Review, 55 FR 35703 (August 31, 1990). In their substantive response, the domestic interested parties asserted that the merchandise subject to the order is currently classifiable under item numbers 1701.11.0025, 1701.11.0045, and 1702.90.300 of the HTSUS. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

Background

On April 26, 1999, the Department issued the Preliminary Results of Full Sunset Review: Sugar From the European Community (64 FR 20257). In our preliminary results, we found that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. Further, we found the net countervailable subsidy likely to prevail if the order were revoked is 10.80 cents per pound, the subsidy from the original investigation. Finally, we found that, although qualifying as a countervailable export subsidy, Article 3 of the Subsidies Agreement did not apply to the export restitution payments program.

On June 8, 1999, we received comments on behalf of the United States Beet Sugar Association and its individual members and the United States Cane Sugar Refiners' Association and its individual members (collectively ''the Associations''), within the deadline specified in 19 CFR 351.309(c)(1)(i). We did not receive comments from respondent interested parties.

Comments

Comment 1: The Associations assert that the Department's preliminary determination that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy was appropriate and should be maintained for the final results. The Associations further assert that the Department properly applied the relevant standards, and the record in the underlying sunset review cannot support any alternative conclusion.

Department Position: We agree with the Associations. For the reasons enunciated in our notice of preliminary results (*see* Preliminary Results of Full Sunset Review: Sugar From the European Community, 64 FR 20257 (April 26, 1999)), we continue to find that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy.

Comment 2: The Associations assert that the Department correctly concluded that the export restitution payments on European sugar constitute a countervailable subsidy. However, they argue that the Department incorrectly concluded that the subsidies are exempt from Articles 3 and 6 of the Subsidies Agreement.

The Associations argue that the respondent foreign government and/or industry bears the burden of demonstrating that the export subsidy program at issue is in conformance with the provisions of Part V of the Agreement on Agriculture before the Department may properly determine that the program is exempt from Articles 3, 5, or 6 of the Subsidies Agreement. Further, the Associations assert that the European Commission failed to place evidence on the record or set forth arguments supporting the proposition that the restitution payment system under the CAP conforms to Part V of the Agreement on Agriculture. The Associations assert that in their substantive response they had presented significant evidence that the sugar restitution payments under the CAP have repeatedly been found to violate GATT/WTO principles. Additionally, they assert that they had presented further evidence showing that it is likely that the European Union (''EU'') will be unable to meet its GATT/WTO commitments to reduce the levels of these export subsidies, in light of the increasing gap between the EU and world price of sugar and the likely accession of ten new member states to the EU in the near term.

In conclusion the Associations argue that the EU's sugar export restitution payments most certainly constitute a prohibited countervailable subsidy, whether under Article 3 of the Subsidies Agreement or under Article 13(c) of the Agreement on Agriculture.

Department's Position: We disagree with the Associations' assertion that the burden is on the respondent government and/or exporters to provide evidence demonstrating that the export subsidy program at issue is in conformance with the provisions of Part V of the Agreement on Agriculture before the Department may properly determine that the program is exempt from Articles 3, 5, or 6 of the Subsidies Agreement. While the provision of such evidence would certainly aid the Department in its determination, failure of the respondent government to provide such evidence does not preclude the Department from finding that the program is in conformance with the provisions of Part V of the Agreement on Agriculture.

Further, we do not agree with the Associations that the evidence they presented regarding prior determinations is sufficient to find this program is a prohibited subsidy under the WTO Agreements. The Associations referred to prior determinations by Treasury, Commerce, the Commission, and the Canadian International Trade Tribunal, that export restitution payments under the CAP are countervailable subsidies. We agree that each of these determinations supports a finding that the program is a countervailable export subsidy; however, they do not address the question of whether the program is a prohibited export subsidy under the Subsidies Agreement. In addition, the Associations refer to the GATT Dispute Panel Report on Complaint by Brazil Concerning EC Refunds on Exports of Sugar (adopted November 10, 1980) and the GATT Dispute Panel Report on Complaint by Australia Concerning EC Refunds on Exports of Sugar (adopted November 6, 1979). While both of these adopted Panel Reports held that the CAP sugar regime constitutes a form of subsidy subject to the provisions of Article XVI of the GATT, neither of these reports addresses the question of whether the program is in conformance with the provisions of Part V of the WTO Agreement on Agriculture.

As to the Associations' assertions that falling world sugar prices and the pending application of ten new former Eastern bloc countries currently seeking admission to the EU make it, at best, uncertain whether the EU will be able to meet its commitments to reduce export subsidies, we find these allegations insufficient to support a finding that the program is not in conformance with Part V of the WTO Agreement on Agriculture.

Article 13(c) of the Agreement on Agriculture states that export subsidies conforming to the provisions of Part V of the Agreement on Agriculture shall be exempt from actions based on Article

XVI of GATT 1994 or Articles 3, 5, and 6 of the Subsidies Agreement. Part V of the Agreement on Agriculture, specifically Articles 8 and 9, refers to the export subsidy commitments as specified in the Schedule of each Member. Nothing on the record suggests that the restitution payments on sugar do not conform to the commitments as reflected in the EU's Schedule. Therefore, we continue to find that, although qualifying as a countervailable export subsidy, Articles 3 and 6 of the Subsidies Agreement do not apply to the export restitutions payment program on sugar under the CAP.

Comment 3: The Associations argue that the Department should make an upward adjustment to the net countervailable subsidy rate to arrive at a rate that represents the countervailing duty rate likely to prevail if the order is revoked. The Associations assert that the evidence set forth in their substantive response supports a net countervailable subsidy rate of 27.97 cents/pound of sugar and that even the data presented in the EC's response supports a net subsidy rate of 18.61 cents/pound of sugar. The Associations argue that, in the present case, because the investigation rate is based on data that is more than 20 years old and both domestic and foreign interested parties have provided the Department with more recent data establishing a current net subsidy rate of at least 18.61 cents/pound, there is sufficient cause for the Department to make an exception to the general rule of selecting the subsidy rate from the original investigation.

In conclusion, the Associations request that the Department make an upward adjustment to the countervailing duty rate likely to exist in the event of revocation to reflect the current prevailing rate of 27.97 cents/pound, or 18.61 cents/pound at a minimum.

Department's Position: In sunset reviews, the Department is assigned the responsibility of providing to the International Trade Commission (''the Commission'') the magnitude of the net countervailable subsidy that is likely to prevail if the order is revoked. For purposes of determining whether revocation of a countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs the Department to consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. The Department noted in its Sunset Policy Bulletin that, consistent with the Statement of Administrative Action (''the SAA'')[1] at 890, and the House Report[2] at 64, the Department normally will select a rate from the investigation, because that is the only rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place (*see* section III.B.1 of the Sunset Policy Bulletin). Additionally, the Department noted that the rate from the investigation may not be the most appropriate if it was derived from a subsidy program which was found in a subsequent review to have undergone a program-wide change (*see id.* at section III.B.3).

The Department defines ''program-wide change'' as a change that (1) is not limited to an individual firm or firms and (2) is effectuated by an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree.[3]

As described in numerous **Federal Register** notices regarding the underlying investigation and administrative reviews, export restitution payments made under the CAP are a means of guaranteeing sugar producers a stated export price for sugar (see e.g., Sugar From the European Community; Preliminary Results of Countervailing Duty Administrative Review, 55 FR 28799 (July 13, 1990)). Further, export restitution payments are only granted when the world price of sugar as established in international markets is lower than the ''threshold price'' established by the EC. Changes in the world market price are not effectuated by the EC. However, the ''threshold price,'' the amount of restitution payments to be provided, are determined by the EC, effectuated by regulation, and published in the Official Journal. As such, these changes constitute program-wide changes that the Department may consider in determining the net countervailable subsidy likely to prevail if the order were revoked.

Therefore, in a change from our preliminary results, we agree with the Associations that the Department should determine the net countervailable subsidy likely to prevail were the order revoked based on more recent information. In its substantive response, the EC identified the average export refund for marketing years 1995/1996, 1996/1997, and 1997/1998. In its substantive response, the Committee calculated a subsidy rate based on the export refund rate from October 1998. Because, as the Committee argues, the world price of sugar has been declining since 1995, we determine that recent data would more closely approximate the level of subsidy if the order were revoked than would the subsidy levels from the original investigation or administrative reviews conducted in the early 1980's.

We do not, however, agree with the Associations' suggestion that a rate based on an October 1998 announcement is the most appropriate. Over the 1995–1998 time period, the average export refund has varied from year to year and we do not have a basis to select one year over the other as the most probative rate. Because we must provide the Commission with the rate likely to prevail in the future based upon past experience, we have determined that an average of the marketing year refunds since the implementation of the WTO Agreement on Agriculture, as reported in the EC's response, is an appropriate representation of the net countervailable subsidy likely to prevail if the order were revoked. On this basis, we find that the net countervailable subsidy likely to prevail were the order revoked is 23.69 cents per pound of sugar, the rate established by the record as reflecting recent trends in the level of export refunds.

Comment 4: The Associations argue that the Department's determination to conduct a full sunset review is plainly inconsistent with its own regulations, and will have the effect of rendering the provision of 19 CFR 351.218(e)(3)(ii) meaningless in all countervailing duty sunset determinations going forward. Specifically, the Associations assert that none of the foreign respondent producers filed any substantive responses to the notice of initiation and, therefore, the Department should have determined that it did not receive adequate response since it did not have complete substantive responses from respondent interested parties accounting on average for more than 50 percent of the total exports of the subject merchandise. Given that the legislative history contemplates that a response from the foreign government in addition to responses from the foreign industry respondents is essential to the sunset determination, foreign governments are not entitled to a full review where all of the industry participants that the government

[1] H.R. Doc. No. 103–316, vol. 1 (1994).

[2] H.R. Rep. No. 103–826, pt. 1 (1994).

[3] *See* 19 CFR 351.526 (1999), which although not applicable to this sunset review, nonetheless provides guidance on the Department's policy.

presumably represents have failed to respond.

In conclusion, the Associations argue that the Department should determine that a full review in this case was unnecessary and unwarranted.

Department's Position: We disagree. The Department's regulations do not require that the Department conduct an expedited review. Rather, the regulations provide that the Department *normally* will conduct an expedited review where it does not receive adequate response, where adequate response is described as responses from parties accounting for more than 50 percent of the volume of exports over the five years preceding initiation of the sunset review. The Department *must* conduct an expedited sunset review of a countervailing duty order only when the foreign government does not participate.

Unlike other countervailing duty investigations or reviews, where company-specific information is required in order to measure the amount of countervailable subsidy, the subsidy rate from the only program investigated over the life of this order has consistently been determined without the need for, or use of, company-specific information. Because adequacy determinations are made for the purpose of determining whether there is sufficient participation to warrant a full review, in a case such as this, where company-specific information provides no additional input into our determinations, we believe that requiring producer/exporter participation is not warranted. Therefore, in this sunset review, we continue to believe that the response of the EC forms an adequate basis for conducting a full review to determine whether revocation of the countervailing duty order on sugar from the EC will likely lead to continuation or recurrence of a countervailable subsidy and, if so, what the level of the net countervailable subsidy would be.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in the preliminary results of review. For the reasons set forth in the preliminary results of review, we continue to determine the country-wide net countervailable subsidy in terms of cents per pound. However, for this final, we find the net countervailable subsidy likely to prevail if the order were revoked is 23.69 cents per pound. Although qualifying as a countervailable export subsidy, Articles 3 and 6 of the Subsidies Agreement do not apply to the export restitution payments program under the EC's CAP.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 27, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23040 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082699B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Florida/Alabama Habitat Protection Advisory Panel (AP).

DATES: The meeting will begin at a.m. on Tuesday, September 28, 1999 and conclude by p.m.

ADDRESSES: The meeting will be held at the Hilton Tampa Aiport Westshore, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Gulf States Marine Fisheries Commission; telephone: 228–875–5912.

SUPPLEMENTARY INFORMATION: The Florida/Alabama group is part of a three unit Habitat Protection Advisory Panel of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

At this meeting, the AP will discuss revision of the Council's Habitat Policy to include essential fish habitat (EFH) provisions, an update on EFH assessments in Council fishery management plan amendments, an update on the status of the EFH lawsuit, impact of two new gas pipelines between Mobile, AL and central Florida, status of the new marine reserves off the Florida panhandle, and an update on Alabama's expansion of their artificial reef zone.

Although other issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. The AP's actions will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 21, 1999.

Dated: September 7, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–23798 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090799B]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public meeting with the limited access permit holders in the golden crab fishery in the South Atlantic region.

DATES: The meeting will be held on Monday, September 27, 1999, from 1:00 p.m. until 6:00 p.m.

ADDRESSES: The meeting will be held at the Best Western, 411 South Krome, Florida City, FL 33034; telephone: 305-246-5100.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Robert Mahood, Executive Director; telephone: (843) 571-4366; fax: (843) 769-4520; email: robert.mahood@noaa.gov

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for Council staff to meet with the limited access permit holders in the golden crab fishery to gather information in preparation for Amendment 1 to the Golden Crab Fishery Management Plan.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 20, 1999.

Dated: September 8, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–23799 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082599B]

Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Gulf of Alaska Management Area; Exempted Fishing Permit

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

ACTION: Issuance of an exempted fishing permit (EFP).

SUMMARY: NMFS announces the issuance of exempted fishing permit (EFP) 99–04 to the Alaska Fisheries Development Foundation, Inc. (AFDF). The EFP authorizes AFDF to conduct an experiment in the Gulf of Alaska (GOA) to test artificial bait fabricated from Alaska pollock offal. This EFP is necessary to obtain information that could prove valuable for Alaska fisheries. It is intended to further the goals of the Magnuson-Stevens Fishery Conservation and Management Act.

ADDRESSES: Copies of the EFP and the Environmental Assessment (EA) prepared for the EFP are available from Lori Gravel, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Nina Mollett, 907–586–7462.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska authorizes the issuance of EFPs for fishing for groundfish in a manner that would otherwise be prohibited under existing regulations. The procedures for issuing EFPs are set out at 50 CFR 679.6 and 600.745.

NMFS received an EFP application from AFDF on April 19, 1999, to conduct field trials in the GOA to test artificial longline bait fabricated from Alaska seafood offal. An announcement of receipt of the EFP application was published in the **Federal Register** on June 8, 1999 (64 FR 30488). The North Pacific Fishery Management Council (Council) approved the application at its June 9–14, 1999, meeting in Kodiak.

AFDF is receiving funding for this project from the Alaska Science Technology Foundation and is conducting its research collaboratively with MARCO Marine; the Center for Applied Regional Studies (based in Cambridge, Massachusetts); and the Wildlife Conservation Society, which is run by the Bronx Zoo in New York City.

AFDF plans to conduct the experiment in the GOA, near Seward, Kodiak, or Sitka, and will charter longline vessels under 60 feet for the purpose. The experiment will consist of two trials: One in late July, consisting of 8 days of fishing, and one in September, consisting of 12 days of fishing. The objective of the experiment is to compare the effectiveness between artificial and natural bait under commercial fishing conditions.

The first trial is intended to determine whether the artificial bait is effective and to make any changes needed in the bait itself or in the procedures followed. The second trial is intended to obtain meaningful and, if possible, statistically significant results on the effectiveness of the bait. The bait will be tested for its attractiveness to Pacific cod, to other species taken as incidental catch in the Pacific cod fishery, and to Pacific halibut.

AFDF sees both environmental and socioeconomic benefits accruing from its experiment, which, if successful, will lead to the substitution of artificial bait for much of the natural bait that is currently used. Potential environmental benefits include:

1. Recycling waste that is currently being dumped into the ocean into a productive use;

2. Reducing fishing pressure on bait species that are also used for human consumption, such as squid and herring;

3. Enhancing fishermen's ability to target species and size of fish desired, thus lowering bycatch and discard rates. Norwegian studies have indicated that bait type may be the most important gear factor affecting species and size selectivity.

Potential socioeconomic benefits include:

1. Creation of Alaskan jobs in producing the artificial bait, and money brought into Alaska through sale of artificial bait, as opposed to natural bait currently bought out of state.

2. Cost savings from bait that is less subject to loss, can continue to attract fish for longer periods underwater, and is more consistent in quality. Frozen bait, bought sight unseen, is sometimes rotten, and natural bait is often lost when it is cut into wrong size pieces;

3. Cheaper bait—AFDF anticipates that its artificial bait will be less expensive by 15 to 20 percent;

4. Higher catch rates if artificial bait proves to be indeed more successful in attracting fish than natural bait; and

5. Improved safety in that uniform sized bait will be less likely to cause problems in automatic bait machines.

AFDF plans to make two to four sets per day, depending on the weather. It will use four strings of longlines per set, each consisting of four skates and 200 hooks. Natural bait (herring) and artificial bait will be fished on each longline, alternating every ten hooks. Hook timers will be used to determine whether fish are attacking the bait and not being hooked and to compare catch over time and the success of hooking rates among bait types. Temperature-depth-time recorders will be used to determine fishing time on the bottom. Underwater video observations will be taken twice daily, for two hours at a time, to observe fish behavior with artificial and natural bait and to interpret the data recorded by the hook timers.

Data collected prior to each set and before recovering gear will include vessel location, time, date, set number, set direction, beginning and ending set time, bottom depth, wind speed, swell height, chop height, presence of birds, and so forth. While hauling in the gear, data collected will include the bait type,

hook number in the sequence, presence of hook timer, bait status when nothing is caught (bait intact, partially gone, lost, hook lost, snood entanglement), species caught, and hook location.

AFDF is required by the terms of the permit to report within 24 hours the beginning and ending times of each fishing trip taken under the EFP. It is also required to provide a report to NMFS by February 2000, including all catch data and its analysis and findings, and to coordinate with the Council on presenting the results of its experiment at a Council meeting.

For the purposes of this experiment, AFDF will be allowed to catch 20,800 lb (9.45 mt) of Pacific cod and 1,100 lb (0.5 mt) of rockfish. The participants are expected to catch relatively small amounts of other species while fishing. NMFS is not including these other species as a limiting factor in the EFP.

The EFP states that, if AFDF approaches its limit on Pacific cod or rockfish, the Administrator, Alaska Region, NMFS (Regional Administrator), must be notified immediately and will make a decision on whether to stop fishing under the EFP or to modify the terms of the permit, pursuant to 50 CFR 679.6(f).

The applicant estimated a catch of up to 12,000 lb (5.44 mt) of Pacific halibut. However, the vessel is receiving no allowance of prohibited species bycatch and the halibut must be counted against the chartered vessel's individual fishing quota (IFQ) for halibut.

Groundfish mortality associated with this experiment will not be deducted from total allowable catch (TAC) specified for the 1999 groundfish fisheries. This additional groundfish mortality will not cause a conservation problem for groundfish species because estimated total removals under the EFP are very small compared with the overall TACs for these species and would not contribute in a meaningful way to approaching overfishing levels already considered in the EA for the 1999 groundfish specifications.

Failure of the permit holder to comply with the terms and conditions of the EFP may be grounds for revocation, suspension, or modification of the EFP under 15 CFR part 904 with respect to any or all persons and vessels conducting activities under the EFP. Failure to comply with applicable laws also may result in sanctions imposed under those laws.

Classification

The Regional Administrator has determined that fishing activities conducted under this action will not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on the groundfish fisheries. Participating vessels must take seabird avoidance measures; in the unlikely event that a short-tailed albatross is taken, it would be counted against the four short-tailed albatrosses allowed under the U.S. Fish and Wildlife Service's Biological Opinion on the effects of the hook-and-line groundfish fisheries in the Gulf of Alaska and Bering Sea and Aleutian Islands Area, March 19, 1999.

This notice is exempt from review under E.O. 12866. It also is exempt under the Regulatory Flexibility Act (RFA) because prior notice and opportunity for public comment are not required. Therefore, the analytical requirements of the RFA are inapplicable.

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

Dated: September 7, 1997.

Gary C. Matlock,

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

[FR Doc. 99–23797 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Removing Companies From List of Companies From Which Customs Shall Deny Entry to Textiles and Textile Products

September 8, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs directing Customs not to apply the directive regarding denial of entry to shipments from certain companies.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

In a notice and letter to the Commissioner of Customs, dated July 27, 1999, and published in the **Federal Register** on July 30, 1999 (64 FR 41395), the Chairman of CITA directed the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by certain listed companies; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Based on information received since that time, CITA has determined that Macau Ltd., Fabrica de Artigos de Vestuario; and Tong Heng, Fabrica de Vestuario, two of the listed companies, should not be subject to that directive. Effective on September 13, 1999, Customs should not apply the directive to shipments of textiles and textile products allegedly manufactured by these two companies. CITA expects that Customs will conduct on-site verifications of these companies' textile and textile product production.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1999.

Commissioner of Customs
Department of Treasury, Washington, DC 20229

Dear Commissioner: In the letter to the Commissioner of Customs, dated July 27, 1999 (64 FR 41395), the Chairman of CITA directed the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by certain listed companies; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Based on information received since that time, CITA has determined that Macau Ltd., Fabrica de Artigos de Vestuario; and Tong Heng, Fabrica de Vestuario, two of the listed companies, should not be subject to that directive. Effective on September 13, 1999, Customs is directed to not apply the directive to shipments of textiles and textile products allegedly manufactured by these two companies. CITA expects that Customs will conduct on-site verifications of these companies' textile and textile product production.

CITA has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 99–23893 Filed 9–9–99; 2:28pm]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, September 15, 1999, 10:00 a.m. (Previously scheduled for Thursday, September 16, 1999 at 2:00 p.m.).

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 9, 1999.

Todd A. Stevenson,

Deputy Secretary.

[FR Doc. 99–23937 Filed 9–9–99; 3:30 pm]

BILLING CODE 6355–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 9:00 a.m., September 29, 1999.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Defense Nuclear Facilities Safety Board will convene the eleventh quarterly briefing regarding the status of progress of the activities associated with the Department of Energy's Implementation Plans for the Board's Recommendations 95–2, Integrated Safety Management (''ISM'') and 98–1, Integrated Safety Management (Response to Issues Identified by the Office of Internal Oversight). In addition to a briefing on the status of these items, specific topics will include, but not be limited to, the following.

- Actions necessary to achieve full ISM implementation at defense nuclear facilities by September 2000;
- Presentations by the Rocky Flats Environmental Technology Site and the Savannah River Site regarding completion of initial ISM program implementation, and processes for ensuring continuous improvement;
- The result of Authorization Agreement reviews by the Offices of Defense Programs and Environmental Management;
- The status of ISM guidance document preparation;
- Progress on development of performance indicators; and
- Action items arising from the recent ISM Feedback and Improvement Workshop.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: September 8, 1999.

John T. Conway,

Chairman.

[FR Doc. 99–23960 Filed 9–9–99; 3:31 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, 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 November 12, 1999.

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, 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: September 7, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: The Study of Personnel Needs in Special Education (SPeNSE).

Frequency: One-time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8,083.

Burden Hours: 5,578.

Abstract: The Study of Personnel Needs in Special Education (SPeNSE) will describe the number and qualifications of personnel serving students with disabilities. SPeNSE will explore variation in workforce adequacy and identify working conditions, State and local policies, preservice education, and continuing professional development practices that explain that variation.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of

Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO__IMG__Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Special Education Elementary Longitudinal Study (SEELS).

Frequency: Biennially.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 31,095.

Burden Hours: 17,049.

Abstract: SEELS will provide the first national picture of the experiences and outcomes of students in special education ages 6 through 12 at the outset of the study. The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization. Data will be collected three times over a five-year period from the parents, teachers and principals of sample students.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO__IMG__Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 342.

Abstract: Form RSA–509 will be used to analyze and evaluate the Protection and Advocacy of Individual Rights (PAIR) Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to protect their legal and human rights.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO__IMG__Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–23676 Filed 9–10–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Wednesday, September 29, 1999; 6:00 p.m.–9:00 p.m.

ADDRESS: Pojoaque High School, Music Room, Route 502, Pojoaque, NM.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov*; or Internet http:www.nmcab.org.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Public Comment, 6:30 p.m.–7 p.m.
2. Committee Reports: Environmental Restoration, Monitoring and Surveillance, Waste Management, Community Outreach, Budget.
3. Election of Officers for FY 2000.
4. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on September 8, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–23704 Filed 9–10–99; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Savannah River Site; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site

DATES: Monday, September 27, 1999: 6:30 p.m.–7 p.m. (Public Comment Session) 7 p.m.–9 p.m. (Individual Subcommittee meetings); Tuesday, September 28, 1999: 8:30 a.m.–4 p.m.

ADDRESSES: All meetings will be held at: Savannah Rapids Pavillion, Evans-to-Lock Road, Martinez, GA 30809.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of Environmental Quality, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, September 27, 1999

6:30 p.m. Public Comment Session
7:00 p.m. Subcommittee meetings
9:00 p.m. Adjourn

Tuesday, September 28, 1999

8:30 a.m. Approval of Minutes, Agency Updates (approximately 15 minutes)
Public Comment Session (5-minute rule, approximately 10 minutes)
Facilitator Update (approximately 15 minutes)
SRS 1998 annual Report (approximately 45 minutes)
12:00 p.m. Lunch Break
Environmental Restoration and Waste Management Subcommittee Report continued (approximately 30 minutes)
Nuclear Materials Management Subcommittee Report (approximately 30 minutes)
Risk Management and Future Use Subcommittee (approximately 45 minutes)
Administrative Subcommittee Report (approximately 20 minutes)
Budget Subcommittee Report (approximately 10 minutes)
Outreach Subcommittee Report (approximately 10 minutes)
Public Comments (approximately 10 minutes)
4:00 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting, Monday, September 27, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, PO Box A, Aiken, S.C. 29802, or by calling (803)–725–5374.

Issued at Washington, DC on September 7, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–23705 Filed 9–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, September 28, 1999: 10 p.m.–2:30 p.m.

ADDRESSES: Amarillo Senior Citizens' Center, 1217 South Tyler Street, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, PO Box 30030, Amarillo, TX 79120, (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

10:00 Welcome-Agenda Review-Approval of minutes
10:15 Co-Chair Comments
10:30 Task Force/Subcommittee Reports
11:15 Ex-Officio Reports
11:30 Updates-Occurrence Reports-DOE
12:00 Lunch
1:00 Environmental Restoration/Off-Site Activities Update
2:00 Closing Remarks
2:15 Public Comments
2:30 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX, phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX, phone (806) 537–3742. Hours of operation are from 9 a.m. to 7

p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on September 8, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–23706 Filed 9–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–567–000, (FERC–567)]

Proposed Information Collection and Request for Comments

September 7, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before November 12, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–567 ''Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity'' (OMB Control No. 1902–0005) is used by the Commission to implement the statutory provisions of Section 4, 5, 6, 7, 9, 10(a) and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688), and Title III, Sections 301(a)(1), 303(a), 304(d), Title IV, Sections 401 and 402, Title V, Section 508 of the Natural Gas Policy Act (Pub. L. 95–621). The information collected under the requirements of FERC–567 is used by the Commission to obtain accurate data on pipeline facilities and the peak day capacity of these facilities. Specifically, the FERC–567 data is used in determining the configuration and location of installed pipeline facilities; evaluating the need for proposed facilities to serve market expansions; determining pipeline interconnections and receipt and delivery points; and developing and evaluating alternatives to proposed facilities as a means to mitigate environmental impact of new pipeline construction.

FERC–567 also contains valuable information that can be used to assist federal officials in maintaining adequate natural gas service in times of national emergency. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 260.8 and 284.12.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as follows:

Number of responses annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
91	1.714*	81.58	12,724

*Derived by dividing the total number of responses expected annually (156) by the number of respondents (91) and rounding to three places.

The estimated reporting cost to respondents is $672,225 (12,724 hours divided by 2,080 hours per full-time employee-year multiplied times $109,889 per year (the estimated average salary per employee (including overhead expenses)) = $672,225).

There is a net increase of 977 hours in the total burden hours over the last Office of Management and Budget (OMB) clearance of the FERC–567 data collection, from 11,747 hours to 12,724 hours. This increase is an adjustment resulting from an increase in the number of respondents from 89 to 91 with a simultaneous increase in the number of responses per respondent from 1.62 to 1.71 (rounded). The number of responses per respondent is greater than one because some respondents are required to file both of the FERC–567 filing requirements while others are required to submit only one of the two.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

David P. Boergers,

Secretary.

[FR Doc. 99–23752 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–87–000]

Clarksdale Public Utilities Commission v. Entergy Services, Inc., as Agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States, Inc., Notice of Complaint

September 7, 1999.

Take notice that on September 3, 1999, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi (Clarksdale) tendered for filing a complaint against Entergy Services Inc., as agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc. (collectively, Entergy) in connection with Entergy's May 6, 1999 update to its Open Access Transmission Tariff (OATT) filed in Docket No. ER99–2854–000.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before September 23, 1999. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before September 23, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–23750 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P–11814–000]

The Coalition for the Fair and Equitable Regulation of Docks on Lake of the Ozarks, Inc. v. Union Electric Company, d/b/a AmerenUE; Notice of Complaint

September 7, 1999.

Take notice that on September 3, 1999, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, The Coalition for the Fair and Equitable Regulation of Docks on Lake of the Ozarks, Inc., by and through its attorney, Stephen P. Brick, 550 39th Street, Des Moines, Iowa 50312, filed with the Federal Energy Regulatory Commission a complaint regarding certain actions by Union Electric Company, d/b/a AmerenUE (AmerenUE), concerning the implementation, the authority to implement and the substance of AmerenUE's 1999 Permit Program.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before September 23, 1999. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This Filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before September 23, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–23759 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–88–000]

Delmarva Power & Light Company; Notice of Filing

September 7, 1999.

Take notice that on September 3, 1999, Delmarva Power & Light Company (Delmarva) tendered for filing a Petition for Declaratory Order and Request for Expedited Consideration. Delmarva's petition concerns Section 305(a) of the Federal Power Act.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 15, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23751 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–609–000]

Texas Gas Transmission Corporation; Notice of Application

September 7, 1999.

Take notice that on August 27, 1999, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP99–609–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas exchange service with Memphis Light, Gas & Water Division (Memphis) of the City of Memphis, Tennessee, a local distribution company, all as more fully set forth in the application on file with

the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Texas Gas proposes to abandon the exchange service with Memphis that was provided under Texas Gas's Rate Schedule X–35. Texas Gas states that this exchange service is no longer required and has been terminated by mutual agreement of the parties by letter dated August 9, 1999.

The name, address and telephone number of the person to whom correspondence and communications concerning this application should be addressed is: David N. Roberts, Manager of Certificates and Tariffs, Texas Gas Transmission Corporation, P.O. Box 20008, Owensboro, KY 42304.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 28, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice for such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–23748 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–612–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

September 7, 1999.

Take notice that on September 3, 1999, Transcontinental Gas Pipe Line Corporation (Transco), filed a request with the Commission in Docket No. CP–99–612–000, pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by sale an existing delivery meter station in Rockingham County, North Carolina, referred to as the ''Cardinal Meter Station'', authorized in blanket certificate issued in Docket No. CP82–426–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Transco proposes to abandon the Cardinal Meter Station (meter station) by sale to Cardinal Pipeline Company, LLC (Cardinal Pipeline). Cardinal, a Hinshaw pipeline whose rates and service are subject to regulation by the North Carolina Utilities Commission, would own and operate the meter station as part of its pipeline system and would continue to use the meter station to measure gas delivered by Transco. Transco reports that the meter station is used for deliveries of gas to Cardinal Pipeline for the account of Public Service Company of North Carolina, Inc. and Piedmont Natural Gas Company, Inc. Transco states that both Cardinal Pipeline and Piedmont have consented to the proposed abandonment. Transco states that the proposed abandonment would have no impact on Transco's peak day deliveries and little or no impact on Transco's annual deliveries.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 99–23749 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–129–005 (Phase I Remand)]

Trunkline Gas Company; Notice of Informal Settlement Conference

September 7, 1999.

Take notice that an informal settlement conference will be convened in these proceedings on September 14, 1999 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the issues and drafting possible settlement documents in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Lorna J. Hadlock (202) 208–0737.

David P. Boergers,

Secretary.

[FR Doc. 99–23760 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

September 7, 1999.

Take notice that the following application has been filed with the

Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2512–046.

c. *Date Filed:* August 17, 1999.

d. *Applicants:* Elkem Metals Company L.P. and Elkem Metals Company—Alloy, LP.

e. *Name and Location of Project:* The Hawks Nest—Glen Ferris Project is on the New and Kanawha Rivers in Fayette County, West Virginia. The project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Ms. Amy S. Koch, Cameron McKenna LLP, 1275 K Street, NW, 5th Floor, Washington, DC 20037, (202) 466–0060 and Mr. Henry Shaffer, Elkem Metals Company L.P., Airport Office Park, Bldg. 2, 400 Rouser Road, Moon Township, PA 15108–2749, (412) 229–7217.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. *Deadline for filing comments and or motions:* October 14, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2512–046) on any comments or motions filed.

j. *Description of Proposal:* Applicants propose a transfer of the license for Project No. 2512 from Elkem Metals Company L.P. to Elkem Metals Company—Alloy, LP. Transfer is being sought as part of a larger corporate restructuring of the United States operations of the parent company, Elkem Holding, Inc.

The current licensee, Elkem Metals Company, no longer exists. When the new license for the project was issued in 1987, the licensee was a general partnership. However, in January 1994, the partners converted the company to a limited partnership known as Elkem Metals Company L.P. The applicants request after-the-fact Commission approval of the transfer of the project license from Elkem Metals Company to Elkem Metals Company L.P., as well as approval of the prospective transfer from Elkem Metals Company L.P. to Elkem Metals Company—Alloy, LP.

k. *Locations of the application:* A copy of the application is for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

1. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agenices are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23753 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11805–000.

c. *Date filed:* August 23, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Pomme De Terre Dam Hydroelectric Project.

f. *Location:* On the Pomme De Terre River in Hickory County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, *hector.perez@ferc.fed.us,* (202)–219–2843, or Robert Bell, *robert.bell@ferc.fed.us, (202) 219–2806.*

j. *Deadline for filing motions to intervene, protest and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would utilize the Corps of Engineers' Pomme De Terre Dam and consist of: (1) two 80-foot-long and 96-inch-diameter steel penstocks at the outlet works; (2) a powerhouse with two turbine generator units with a total installed capacity of 4.6 megawatts; (3) a tailrace consisting of an exhaust apron; (4) a 14.7-kV, 300-foot-long transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's

Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202)208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLIATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23754 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11806–000.

c. Date filed: August 23, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Melvern Dam Hydroelectric Project.

f. Location: On the Marais Des Cygness River in Osage County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Héctor M. Pérez, *hector.perez@ferc.fed.us*, (202)–219–2843, or Robert Bell, *robert.bell@ferc.fed.us* (202) 219–2806.

j. Deadline for filing motions to intervene, protest and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would utilize the Corps of Engineers' Melvern Dam and consist of: (1) one 80-foot-long and 114-inch-diameter steel penstock at the outlet works; (2) a powerhouse with a turbine generator unit with an installed capacity of 2 megawatts; (3) a tailrace consisting of an exhaust apron; (4) a 14.7-kV, 1,500-foot-long transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888

First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date of the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23755 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11807–000.

c. Dated filed: August 23, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Wilson Dam Hydroelectric Project.

f. Location: On the Saline River in Russell County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Héctor M. Pérez, *hector.perez@ferc.fed.us*, (202)–219–2843, or Robert Bell, *robert.bell@ferc.fed.us*. (202) 219–2806.

j. Deadline for filing motions to intervene, protest and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would utilize the Corps of Engineer's Wilson Dam and consist of: (1) one 80-foot-long and 108-inch-diameter steel penstock at the outlet works; (2) a powerhouse with two turbine generator units with a total installed capacity of 2 megawatts; (3) a tailrace consisting of an exhaust apron; (4) a 14.7-kV, 1,200-foot-long transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's

Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the result of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211,.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23756 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11808–000.

c. Date filed: August 23, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Kanapolis Dam Hydroelectric Project.

f. Location: On the Smoky Hill River in Ellsworth County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Héctor M. Pérez, *hector.perez@ferc.fed.us,* (202)–219–2843, or Robert Bell, *robert.bell@ferc.fed.us.* (202) 219–2806.

j. Deadline for filing motions to intervene, protests, and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would utilize the Corps of Engineers' Kanopolis Dam and consist of: (1) two 80-foot-long and 96-inch-diameter steel penstock at the outlet work; (2) a powerhouse with two turbine generator units with a total installed capacity of 1.3 megawatts; (3) a tailrace consisting of an exhaust apron; (4) a 14.7-kV, 2-mile-long transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's

Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission , 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23757 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of application Accepted for Filing and Soliciting Motion To Intervene, Protests, and Comments

September 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11809–000.

c. Date filed: August 23, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Deadwood Dam Hydroelectric Project.

f. Location: On the Deadwood River in Valley County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Héctor M. Pérez, *hector.perez@ferc.fed.us*, (202)–219–2843, or Robert Bell, *robert.bell@ferc.fed.us*, (202) 219–2806.

j. Deadline for filing motions to intervene, protest and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would utilize the Corps of Engineers' Deadwood Dam and consist of: (1) one 50-foot-long and 96-inch-diameter steel penstocks at the outlet works; (2) a powerhouse with a turbine generator unit with an installed capacity of 1.76 megawatts; (3) a tailrace consisting of an exhaust apron; (4) a 14.7-kV, 25-mile-long transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888

First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission on or before a specified comment date for the particular application either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. the work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the result of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulation to: The Secretary, Federal Energy Regulatory commission, 888 First Street, NW, Washington, DC 20426. An additional copy must be send to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be send to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23758 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

September 8, 1999.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 15, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*** Note:** Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 725th Meeting—September 15, 1999, Regular Meeting (10:00 a.m.)

CAH–1.
Docket No. P–7115,030, Homestead Energy Resources, LLC
CAH–2.
Docket No. P–9423,027, Summit Energy Storage, Inc.
CAH–3.
Docket No. UL98–1,002, Great Northern Paper, Inc.
Other Nnos. P–2634,009, Great Northern Paper, Inc.
CAH–4.
Docket No. P–2523,017, N.E.W. Hydro, Inc.
CAH–5.
Docket No. P–4270,004, Mountain Rhythm Resources

Consent Agenda—Electric

CAE–1.
Docket No. ER99–3408,000, Avista Corporation
CAE–2.
Docket No. ER99–3713,000, Pacific Gas and Electric Company
Other Nos. EL99–50,000, Fresno Irrigation District
CAE–3.
Docket No. ER99–3821,000, Southern Company Services, Inc., Alabama

Power Company, Georgia Power Company and Mississippi Power Company, et al.
Other Nos. ER91–150,013, Southern Company Services, Inc.; ER91–326,005, Southern Company Services, Inc.; ER99–4055,000, Southern Company Services, Inc.

CAE–4.
Docket No. ER99–3637,000, Oswego Harbor Power, L.L.C.
Other Nos. ER99–3643,000, Okeechobee Generating Company; ER99–3668,000, Duke Energy Merchants, LLC; ER99–3677,000, CMS Generation Michigan Power, L.L.C.; ER99–3693,000, Midwest Generation, L.L.C.; ER99–3822,000, Casco Bay Energy Company, LLC; ER99–3911,000, Northbrook New York, L.L.C.; ER99–4081,000, Bay State GPE, Inc.

CAE–5.
Docket No. ER99–3339,000, California Independent System Operator Corporation

CAE–6.
Docket No. ER99–3876,000, Montana Power Company

CAE–7.
Docket No. ER99–3657,000, New England Power Pool

CAE–8.
Docket No. ER99–3110,000, Nevada Power Company

CAE–9.
Docket No. ER99–3888,000, PP&L, Inc.

CAE–10.
Docket No. ER98–1096,000, Southern Company Services, Inc.
Other Nos. EL98–24,000, Southern Company Services, Inc.; ER94–1348,000, Southern Company Services, Inc.; ER95–1468,000, Southern Company Services, Inc.; OA96–27,000, Southern Company Services, Inc.

CAE–11.
Docket No. ER98–1292,000, Dayton Power and Light Company
Other Nos. EL98–20,000, Dayton Power and Light Company

CAE–12.
Docket No. ER99–2331,001, Duke Energy Corporation

CAE–13.
Docket No. ER99–2884,001, Pacific Gas and Electric Company

CAE–14.
Docket No. ER97–2355,000, Southern California Edison Company
Other Nos. ER98–1261,000, Southern California Edison Company; ER98–1685,000, Southern California Edison Company

CAE–15.
Docket No. ER99–3468,000, Delmarva Power & Light Company

CAE–16.
Docket No. ER98–2369,000, Southern California Edison Company

CAE–17.
Docket No. ER98–3759,000, Portland General Electric Company

CAE–18.
Docket No. ER99–933,000, California Power Exchange Corporation

CAE–19.
Docket No. EC99–83,000, Duquesne Light Company, Firstenergy Operating Companies and the Cleveland Electric Illuminating Company, et al.

CAE–20.
Docket No. ER99–3508,000, New York Independent System Operator, Inc. and Central Hudson Gas & Electric Corporation, et al.

CAE–21.
Docket No. ER99–2229,001, California Power Exchange Corporation

CAE–22.
Docket No. ER98–3853,003, New England Power Pool

CAE–23.
Docket No. QF95–61,003, Geysers Power Company, LLC

CAE–24.
Docket No. EC96–19,032, California Power Exchange Corporation
Other Nos. ER96–1663,033, California Power Exchange Corporation

CAE–25.
Docket No. ER98–3527,002, PJM Interconnection, L.L.C.

CAE–26.
Docket No. OA96–78,004, Detroit Edison Company

CAE–27.
Docket No. ER97–1523,005, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company, et al.
Other Nos. EC99–31,001, New York Power Pool; ER97–1523,006, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company, et al.; ER97–4234,004, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company, et al.; OA97–470, 006, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company, et al.

CAE–28.
Omitted

CAE–29.
Docket No. ER93–150,012, Boston Edison Company
Other Nos. EL93–10,007, Boston Edison Company

CAE–30.
Docket No. ER99–1132,003, Duquesne Light Company

CAE–31.
Docket No. EG99–199,000, Duke Energy St. Francis, LLC

CAE–32.
Docket No. EL99–79,000, PP&L Montana, LLC

CAE–33.
Docket No. EL99–81,000, Tennessee Power Company

CAE–34.
Docket No. EL99–77,000, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company, et al.

CAE–35.
Docket No. EL99–66,000, Wabash Valley Power Association, Inc. and American Municpal Power-Ohio, Inc. v. American Electric Power Service Corporation
Other Nos. EL99–72,000, Indiana Municipal Power Agency v. American Electric Power Service Corporation

Consent Agenda—Gas and Oil

CAG–1.
Docket No. RP99–443,001, Petal Gas Storage Company

CAG–2.
Omitted

CAG–3.
Docket No. PR99–12,000, Transok, LLC

CAG–4.
Omitted

CAG–5.
Docket No. PR99–14,000, Shenandoah Gas Company

CAG–6.
Docket No. RP94–271,002, East Tennessee Natural Gas Company

CAG–7.
Docket No. RP99–437,001, Dauphin Island Gathering Partners

CAG–8.
Docket No. RP99–448,000, Southern Natural Gas Company

CAG–9.
Docket No. RP95–408,000, Columbia Gas Transmission Corporation

CAG–10.
Docket No. RP96–272,008, Northern Natural Gas Company

CAG–11.
Docket No. RP97–187,010, Arkansas Western Pipeline, L.L.C.

CAG–12.
Omitted

CAG–13.
Omitted

CAG–14.
Docket No. RP99–421,000, KN Interstate Gas Transmission Company

CAG–15.
Docket No. RP99–227,000, High Island Offshore System, L.L.C.
CAG–16.
Docket No. RS92–11,026, Texas Eastern Transmission Corporation
CAG–17.
Omitted
CAG–18.
Docket No. RP94–72,010, Iroquois Gas Transmission System, L.P.
Other Nos. FA92–59,008, Iroquois Gas Transmission System, L.P.; RP97–126,017, Iroquois Gas Transmission System, L.P.
CAG–19.
Docket No. RP98–117,007, KN Interstate Gas Transmission Company
CAG–20.
Docket No. RP98–380,002, East Tennessee Natural Gas Company
CAG–21.
Docket No. RP99–274,001, Kern River Gas Transmission Company
CAG–22.
Docket No. OR99–4,000, Sinclair Oil Corporation v. Platte Pipe Line Company
CAG–23.
Omitted
CAG–24.
Omitted
CAG–25.
Docket No. CP98–538,003, Midwestern Gas Transmission Company
CAG–26.
Docket No. CP96–542,001, Panhandle Eastern Pipe Line Company
CAG–27.
Docket No. CP96–27,004, Natural Gas Pipeline Company of America
CAG–28.
Docket No. CP97–256,003, KN Wattenberg Transmission Limited Liability Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Regular Agenda—Miscellaneous

M–1.
Docket No. RM98–16,000, Collaborative Procedures for Energy Facility Applications
M–2.
Docket No. RM98–1,000, Regulations Governing Off-the-Record Communications
Final Rule.

Oil and Gas Agenda

I.
Pipeline Rate Matters
PR–1.
Reserved
II.
Pipeline Certificate Matters
PC–1.
Docket No. PL99–3,000, Determining the Need for New Interstate Natural Gas Pipeline Facilities
Statement of Policy.

David P. Boergers,

Secretary.

[FR Doc. 99–23855 Filed 9–9–99; 10:52 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Proposed Rate Schedule Changes

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Opportunity for Public Review and Comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has determined that revisions to the terms and conditions related to real power losses and both operating reserves ancillary services within existing rate schedules NFTS–98B and P–98B are required. Since the proposed changes to the rate schedules are associated with the terms and conditions of service and revised billing units for the ancillary services and do not impact the revenue requirements for the Integrated System, the net results of the 1997 Integrated System Power Repayment Studies, which was the basis for the existing rate schedules, will not be altered. Southwestern held informal meetings with customers to discuss proposed changes and to provide opportunity for input in the development of these changes.

DATES: Written comments on the proposed rate schedule changes are due on or before October 13, 1999.

ADDRESSES: Five copies of written comments should be submitted to: Michael A. Deihl, Administrator, Southwestern Power Administration, One West Third Street, Suite 1400, Tulsa, OK 71103.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, (918) 595–6696, reeves@swpa.gov.

SUPPLEMENTARY INFORMATION: The names of the rate schedules will be changed to NFTS–98C and P–98C in order to reflect the fact that revisions have been made. Two areas of the rate schedules are being revised to reflect changes to the terms and conditions of both (1) Real Power Losses to allow for self-provision, and (2) the Spinning and Supplemental Operating Reserve Ancillary Services to be consistent with the application of Southwestern's provision for such services which will result in a change in rates for these services. These changes are addressed in detail below.

Real Power Losses

The basis for determining the rate to charge for Real Power Losses (Losses) in the current rate schedules (P–98B and NFTS–98B) for transmission service is the average actual costs incurred by Southwestern for the purchase of energy to replace Losses during the most recent twelve-month period. Additionally, the current rate schedules require customers to purchase Losses from Southwestern to meet their obligation to replace loss energy. In the proposed rate schedules, the basis for determining the loss rate will remain the same; however, the period will be based on the previous fiscal year (October through September) rather than the most recent twelve-month period. The rate for Losses, to be effective the next calendar year, will be posted on Southwestern's Open Access Same-Time Information System by November 1 of each year. Southwestern also proposes, in addition to the existing rate schedule provision in which the customer purchases Losses, to allow the customer to annually elect to self-provide all loss energy for which it is responsible. Such election for the self-provision of Losses shall be for a full calendar year and shall be exercised by the execution of a Service Agreement, or equivalent, on or before November 30th of the prior calendar year. Southwestern proposes to initially implement this new procedure effective January 1, 2000. Thereafter, the rate for losses will be reviewed and adjusted as needed to become effective at the beginning of each subsequent calendar year.

Spinning and Supplemental Reserve Ancillary Services

The Federal Energy Regulatory Commission's Order No. 888 states that the transmission provider is required ''to *offer* to provide the ancillary services'' for Spinning Operating Reserves and Supplemental Operating Reserves ''to transmission customers serving load in the transmission provider's control area.'' The transmission customer may make alternative arrangements to acquire these services if the transmission customer demonstrates to the transmission provider that it has adequately done so. Consequently,

Southwestern designed its rates for these services on that basis and provided (in Rate Schedules P–98B and NFTS–98B) that the rates for these services were only to be applied to the transmission transactions that served load within Southwestern's control area.

For reliability purposes, Southwestern operates its control area in accordance with the operating criteria of the Southwest Power Pool (SPP). The SPP criteria related to operating reserves require that each control area maintain an amount of operating reserves based on its net load responsibility. The effect of this is that Southwestern provides operating reserves on all generation in its control area for both internal and external delivery.

After reviewing the existing operating conditions, Southwestern has determined that rate schedules P–98B and NFTS–98B need to be revised to reflect the criteria under which Southwestern operates its transmission system and provides the Operating Reserve Services. Southwestern proposes to revise the terms and conditions relating to the two Operating Reserve ancillary services to charge for these services for all transmission transactions utilizing generation sources located within Southwestern's control area because Southwestern is actually providing the Operating Reserve services for those transactions. In addition to these changes, the billing units for these services will be revised to reflect the additional users of these services, resulting in a decrease in the unit rate for these services from $0.03 per kW/month for Spinning Operating Reserve Services and $0.03 per kW/month for Supplemental Operating Reserve Services to approximately $0.0073 per kW/month for each of these two ancillary services. This *will not* change Southwestern's revenue requirements to recover the cost of providing these services.

Redlined versions of the revised rate schedules NFTS–98C and P–98C will be made available upon request. To request a copy, please contact Barbara Otte at 918–595–6674 or at *otte@swpa.gov* or Tracey Hannon at 918–595–6677 or at *hannon@swpa.gov*.

The Administrator has determined that written comments will provide adequate opportunity for public participation in the rate schedule revision process. Therefore, an opportunity is presented for interested parties to submit written comments on the proposed rate schedule changes. Written comments are due no later than thirty (30) days following publication of this notice in the **Federal Register**. Five copies of written comments should be submitted to: Michael A. Deihl, Administrator, Southwestern Power Administration, One West Third Street, Suite 1400, Tulsa, OK 74103.

Following review and consideration of written comments, the Administrator will finalize and submit the proposed rate schedules to the Secretary of Energy for approval on an interim basis. The Secretary will then forward the proposed rate schedules to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Tulsa, OK this 25th day of August 1999.

Michael A. Deihl,

Administrator.

[FR Doc. 99–23660 Filed 9–10–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00277; FRL–6096–4]

Pre-Manufacture Reporting and Exemption Requirements; Request for Comments on Proposed Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances (EPA ICR No. 0574.11, OMB No. 2070–0012). This ICR involves a collection activity that is currently approved and scheduled to expire on December 31, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number ''OPPTS–00277'' and administrative record number 215, must be received on or before November 12, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information contact: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Telephone: 202–554–1404; TDD: 202–554–0551; e-mail: TSCA-Hotline@epa.gov. For technical information contact: Jim Alwood, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1857; Fax: 202–260–8168; e-mail: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or import new chemical substances, as defined by the Toxic Substances Control Act (TSCA), or manufacture, process, or import a chemical substance for a use that has been determined a significant new use, as defined by TSCA. Potentially affected categories and entities may include, but are not limited to the following:

Type of Business	Standard Industrial Classification (SIC) Code
Chemical manufacturing	28
Petroleum refining	29
Photographic equipment	386

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 720, Subpart B, 40 CFR part 721, Subparts A and C, 40 CFR part 723, Subpart B, and 40 CFR part 725, Subparts A, B, D, E, F, G, and L. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this ICR are available from the EPA website at the ''**Federal Register**-Environmental Documents'' entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/). You can follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice.

B. Fax-on-Demand

You may request to receive a faxed copy of the ICR by using a faxphone to call 202–401–0527 and selecting item 4071. You may also follow the automated menu.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

In addition, the official record for this notice, including the public version, has been established under docket control number ''OPPTS–00277'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202–260–7099.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number ''OPPTS–00277'' and administrative record number 215 in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC, Telephone: 202–260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPPTS–00277'' and administrative record number 215. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit To the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person, listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(a) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA or OMB ICR number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances.

ICR numbers: EPA ICR No. 0574.11, OMB No. 2070–0012.

ICR status: This ICR is currently scheduled to expire on December 31, 1999. 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 information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: TSCA section 5 requires manufacturers and importers of new

chemical substances to submit to EPA notice of intent to manufacture or import a new chemical substance 90 days before manufacture or import begins. EPA reviews the information contained in the notice to evaluate the health and environmental effects of the new chemical substance. On the basis of the review, EPA may take further regulatory action under TSCA, if warranted. If EPA takes no action within 90 days, the submitter is free to manufacture or import the new chemical substance without restriction.

TSCA section 5 also authorizes EPA to issue Significant New Use Rules (SNURs). EPA uses this authority to take follow-up action on new or existing chemicals that may present an unreasonable risk to human health or the environment if used in a manner that may result in different and/or higher exposures of a chemical to humans or the environment. Once a use is determined to be a significant new use, persons must submit a notice to EPA 90 days before beginning manufacture, processing, or importation of a chemical substance for that use. Such a notice allows EPA to receive and review information on such a use and, if necessary, regulate the use before it occurs.

Finally, TSCA section 5 also permits applications for exemption from section 5 review under certain circumstances. An applicant must provide information sufficient for EPA to make a determination that the circumstances in question qualify for an exemption. In granting an exemption, EPA may impose appropriate restrictions.

Responses to the collection of information are mandatory (see 40 CFR parts 720, 721, and 723). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 101.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are manufacturers or importers of new chemical substances, as defined by the TSCA, or manufacturers, processors, or importers of a chemical substance for a use that has been determined a significant new use, as defined by TSCA.

Estimated total number of potential respondents: 432.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 5–6 (average).

Estimated total annual burden hours: 241,611 hours.

Estimated total annual burden costs: $31.665 million.

VI. Are There Changes in the Estimates From the Last Approval?

There is no change in burden from that indicated in the information collection most recently approved by OMB.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

List of Subjects

Environmental protection, Information collection requests, Reporting and recordkeeping requirements.

Dated: September 2, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–23711 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6436–1]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this document is to announce that between April 9, 1997, and February 28, 1999, the U.S. Environmental Protection Agency (EPA) Region 2 Office, issued 2 final determinations, the New Jersey Department of Environmental Protection issued 4 final determinations and the New York State Department of Environmental Conservation (NYSDEC) issued 2 final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21. In addition, this notice announces a third EPA Region 2 final determination that occurred after February 28, 1999 on the AES Puerto Rico, L.P. PSD permit issued by EPA.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jon of the Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, U.S. Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, at (212) 637–4085.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region 2 Office, the NJDEP, and the NYSDEC have made final PSD determinations relative to the sources listed below:

Name	Location	Project	Agency	Final action	Date
American Ref-Fuel Company of Essex County.	Newark, New Jersey	Municipal waste incinerator with a NO_X limit of 164 ppm (3-hour average) revised to 155 ppm (24-hour average)..	NJDEP	PSD Permit Revision	June 29, 1997.
Hoffman La Roche—Roche Vitamins.	Belvidere, New Jersey	New combustion turbine (GE Frame 6, MS6001B) rated at 40 MW and heat recovery steam generator with duct burner for supplemental firing of 167 MMBTU/hr. This new cogeneration will replace existing cogeneration (reciprocating engines) and will result in net reduction of 2023 per year (tpy) of NO_X and 701 tpy of SO^2.	NJDEP	PSD Permit Revision	October 8, 1997.
Wyeth Ayerst Pharmaceuticals.	Town of Orangetown, New York.	Modification to an existing PSD facility to allow the firing of natural gas (as the primary fuel) and number 2 distillate oil (as the backup fuel) in their existing two duct burners in the cogen.	NYSDEC ..	PSD Permit Modification.	December 12, 1997.

Name	Location	Project	Agency	Final action	Date
Hess Oil Virgin Islands Corporation (HOVIC).	St. Croix, Virgin Islands ..	HOVIC owns and operates a petroleum refinery and requested the following facility changes to its PSD permit: 1. Increasing the maximum throughput limit of the fluid catalytic cracking unit (FCCU) complex to 150,000 barrels per day of low sulfur fuel-oil (from 125,000 barrels per day), and increasing the VOC mass emission limits to 12.1 pounds per hour (from 9.6 pounds per hour) and 52.7 tons per year (from 40 tons per year); 2. Increasing the production limit of the sulfuric acid plant to 320 tons per day (from 275 tons per day), and increasing the sulfuric acid mist mass emission limits to 2 pounds per hour (from 1.7 pounds per hour) and 8.8 tons per year (from 7.5 tons per year); 3. Incorporating start-up exemptions from the PSD emission limits, for the FCCU complex, the sulfuric acid plant, and the sulfuric acid plant process heaters; and 4. Providing increased flexibility in the types and amounts of fuel-oil allowed to be burned in existing fuel-consuming units. This flexibility includes use of an intermittent control strategy (i.e., switch-over to a lower sulfur fuel-oil) based on atmospheric conditions	EPA	PSD Permit Revision	December 12, 1997

Name	Location	Project	Agency	Final action	Date
Abbott Laboratories	Barceloneta, Puerto Rico	EPA revised the permit conditions with respect to 3 oil-fired boilers (two existing units and one ''new,'' replacement unit), which are not PSD-affected emission units (that is, these existing units did not require a BACT review or air quality impact analyses). The conditions for these boilers were originally incorporated into the Abbott PSD permit to provide contemporaneous decreases for PM emission exceedances from Abbott's PSD-affected cogeneration facility and, in the subject case, to provide contemporaneous decreases for a PSD non-applicability determination. Specifically, the changes from the currently-effective PSD permit with respect to the 3 oil-fired boilers will not cause a significant increase in emissions of any PSD-affected pollutant.	EPA	PSD Permit Administrative Amendment.	April 3, 1998.

Name	Location	Project	Agency	Final action	Date
Union County Resource Recovery Facility.	Rahway, New Jersey	Permit amendment to clarify an increased waste throughput and the acceptance of ID type 27 waste. The facility was designed and permitted at a ''nominal capacity'' of 1440 tons per day (tpd) of solid waste for three units (i.e., 480 tpd per unit) having a higher heating value (HHV) of 5400 BTU per pound of waste. This corresponds to the design input of 216 MMBTU per hour per unit. Based on operational data, HHV of the waste processed has averaged 5050 BTU per pound of waste. In order to maintain the design heat input of 216 MMBTU per hour per unit, the facility must process a refuse throughput of 513.33 tpd of waste having an average of HHV of 5050 BTU per pound of waste. Based on the facility's original stoker diagram, it operating envelop allows an actual waste throughput for each unit to vary between 432 tpd and 528 tpd (i.e., HHV ranging from 3,800 to 6,000 BTU per pound of waste), for maintaining the design heat input of 216 MMBTU per hour per unit. Therefore, NJDEP is not authorizing a change in the operation of the facility, but rather is clarifying the intent of the original approval.	NJDEP	PSD Permit Administrative Amendment.	April 29, 1998.
New York City Department of Sanitation—Fresh Kills Gas Flaring Project.	Staten Island, New York	Project consists of landfill gas collection and flaring systems. It includes ten enclosed flares (9 active and one standby). The maximum flaring capacity will be 32,728 cubic feet per minute of landfill gas. This project is subject to PSD for NO_X, SO_2, and PM/PM_{10}. In addition, the project is subject to nonattainment review for CO and NO_X.	NYSDEC ..	New PSD Permit	July 6, 1998.

Name	Location	Project	Agency	Final action	Date
AES Puerto Rico, L.P.	Guayama, Puerto Rico ...	A new coal-fired 454 MW steam electric cogeneration facility. The PSD permit was appealed in November 1998. On May 27,1999, EPA's Environmental Appeals Board (EAB) denied the petitions for review.	EPA	New PSD Permit	Permit Issuance: September 18, 1998 PSD Permit Effective Date: May 27, 1999.
Roche Vitamins—Hoffman La-Roche.	Belvidere, New Jersey	Project consists of four boilers. Boilers No. 1, 2, 3, and 4 having fuel firing capacity of 84.4, 13.4, 15.2 and 11.8 MMBTU/hr, respectively. The PSD permit was revised to change the backup fuel from No. 6 fuel oil to No. 2 fuel oil with 0.05% sulfur in all boilers.	NJDEP	PSD Permit Revision	February 5, 1999.

This document lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

U.S. Environmental Protection Agency, Region 2 Office, Air Programs Branch—25th Floor 290 Broadway, New York, New York 10007–1866.

NJDEP Actions

New Jersey Department of Environmental Protection and Energy, Division of Environmental Quality, Bureau of Engineering and Technology 401 East State Street, Trenton, New Jersey 08625.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section 50 Wolf Road, Albany, New York 12233–0001

If available pursuant to the Consolidated Permit Regulations (40 CFR part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: August 26, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–23585 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–1830]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On September 8, 1999, the Commission released a public notice announcing the September 28 and 29, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: September 8, 1999.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, September 28, 1999, from 8:30 a.m., until 5:00 p.m., and on Wednesday, September 29, 1999, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW–C305, Washington, DC 20554.

This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, September 28, 1999

1. Approval of August 24–25, 1999, meeting minutes.

2. Local Number Portability Administration (LNPA) Working Group Report. Update on wireline wireless integration report.

3. Reseller's Code Usage and Forecast Reporting. Discussion and closure on recommendaton for reporting of reseller's data.

4. Numbering Resource Optimization (NRO) Working Group Report. Final review of modifications to telephone number reservation process.

5. Issue Management Group, Paragraph 165, Notice of Proposed Rulemaking, CC Docket 99–200. Review finalized report.

6. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.

7. Lockheed Martin-CIS NANPA update regarding geographic area code splits that follow other than existing rate center lines.

Wednesday, September 29, 1999

8. Cost Recovery Working Group Report. Review issue statement which explores the long range relationships of the Number Portability Administration Center (NPAC) and Limited Liability Corporations (LLCs).

9. Audits Issue Management Group. NANC review of NANPA Central Office (CO) Code Audit Obligations and Audit Framework Recommendation documents.

10. Industry Numbering Committee (INC) Report.

11. Steering Group Report.

12. Other Business.

Federal Communications Commission.

Kurt A. Schroeder,

Acting Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–23804 Filed 9–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3134–EM]

Illinois; Amendment No. 6 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Illinois (FEMA–3134–EM), dated January 8, 1999, and related determinations.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Illinois, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 8, 1999:

Douglas County for reimbursement for emergency protective measures, Category B, under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–23741 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1283–DR]

Minnesota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1283–DR), dated July 28, 1999, and related determinations.

EFFECTIVE DATE: September 2, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 28, 1999:

Beltrami County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–23737 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1286-DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1286-DR), dated August 20, 1999, and related determinations.

EFFECTIVE DATE: August 20, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 20, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and flooding beginning on August 6, 1999, and continuing through August 9, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles E. Biggs of the Federal Emergency Management Agency

to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Burt, Douglas and Washington Counties for Individual Assistance and Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–23735 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: August 22, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 22, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe storms and flooding caused by Hurricane Bret beginning on August 21, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide debris removal and emergency protective measures (Categories A and B), under the Public Assistance program, and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Brad Gair of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

The counties of Aransas, Cameron, Kenedy, Kleberg, Nueces, San Patricio, and Willacy for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–23736 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 22, 1999:

Brooks, Duval, Jim Wells, and Webb Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–23738 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 26, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–23739 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the Individual Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 22, 1999:

Arsansas, Brooks, Cameron, Duval, Jim Wells, Kenedy, Kleberg, Nueces, Webb, and Willacy Counties for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program).

Hidalgo County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–23740 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1285–DR]

Utah; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA–1285–DR), dated August 16, 1999, and related determinations.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 16, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Utah, resulting from a tornado, severe thunderstorms, and hail on August 11, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steve L. Olsen of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Utah to have been affected adversely by this declared major disaster:

Salt Lake County for Individual Assistance and Public Assistance.

All counties within the State of Utah are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–23734 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1284–DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1284–DR), dated August 16, 1999, and related determinations.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 16, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin,

resulting from severe storms, straight-line winds, and flooding beginning on July 4, 1999 and continuing through July 31, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas Davies of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Ashland, Bayfield, Douglas, Florence, Iron, Oneida, Price, Rusk, Sawyer, and Vilas Counties for Public Assistance.

All counties within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–23733 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–PS4703

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 29–30, 1999.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 29–30, 1999.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests continued vigorous expansion in economic activity. Nonfarm payroll employment has increased at a relatively rapid pace in recent months and the civilian unemployment rate, at 4.2 percent in May, matched its low for the year. Manufacturing output rose substantially further in May. Total retail sales increased briskly last month after recording large gains on average earlier in the year. Housing activity has remained robust in recent months. Available indicators suggest that business capital spending, especially for information technology, has accelerated this spring. The nominal deficit on U.S. trade in goods and services widened somewhat in April from its first-quarter average. Consumer price inflation was up somewhat on balance in April and May, boosted by a sharp increase in energy prices; improving productivity has held down increases in unit labor costs despite very tight labor markets.

Interest rates have risen somewhat since the meeting on May 18, 1999. Key measures of share prices in equity markets are unchanged to somewhat lower on balance over the intermeeting period. In foreign exchange markets, the trade-weighted value of the dollar has changed little over the period in relation to the currencies of a broad group of important U.S. trading partners.

After recording sizable increases in April, apparently owing to a tax-related buildup in liquid accounts, growth of M2 and M3 slowed in May as tax payments cleared and appears to have remained moderate in June. For the year through June, M2 is estimated to have increased at a rate somewhat above the Committee's annual range and M3 at a rate near the upper end of its range. Total domestic nonfinancial debt has continued to expand at a pace somewhat above the middle of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at this meeting the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1998 to the fourth quarter of 1999. The range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 2000, the Committee agreed on a tentative basis to set the same ranges for growth of the monetary aggregates and debt, measured from the fourth quarter of 1999 to the fourth quarter of 2000. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

To promote the Committee's long-run objectives of price stability and sustainable economic growth, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 5 percent. In view of the evidence currently available, the Committee believes that prospective developments are equally likely to warrant an increase or a decrease in the federal funds rate operating objective during the intermeeting period.

By order of the Federal Open Market Committee, September 3, 1999.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 99–23690 Filed 9–10–99; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of June 29–30, 1999, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–3087]

American Ingredients Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Ingredients Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium stearoyl lactylate as an emulsifier,

stabilizer, and texturizer in cream liqueur drinks.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3072.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4684) has been filed by American Ingredients Co., 3947 Broadway, Kansas City, MO 64111. The petition proposes to amend the food additive regulations in § 172.846 *Sodium stearoyl lactylate* (21 CFR 172.846) to provide for the expanded safe use of sodium stearoyl lactylate as an emulsifier, stabilizer, and texturizer in cream liqueur drinks.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 31, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–23682 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2997]

Engelhard Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Engelhard Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1-naphthelenesulfonic acid, 2-[(4,5-dihydro-3-methyl-5-oxo-1-(3-Sulfopheny)-1H-pyrazol-4-yl)azo]-, strontium and calcium salt (1:1) (C.I. Pigment 209 and C.I. Pigment 209:1) as colorants for polymers intended for food-contact applications.

FOR FURTHER INFORMATION CONTACT: Mark Hepp, Center for Food Safety and Applied Nutrition, HFS–215, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, (202) 418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4691) has been filed by Engelhard Corp., Pigments and Additives Group, 3400 Bank St., Louisville, KY 40212. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297)to provide for the safe use of 1-naphthelenesulfonic acid, 2-[(4,5-dihydro-3-methyl-5-oxo-1-(3-Sulfopheny)-1H-pyrazol-4-yl)azo]-,strontium and calcium salt (1:1) (C.I. Pigment 209 and C.I. Pigment 209:1) as colorants for polymers intended for food-contact applications. The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 25, 1999

Alan M. Rulis

Director, Office of Premarket Approval, Center for Food Safety and Nutrition

[FR Doc. 99–23664 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0656]

Guidance for Industry on Submission of Abbreviated Reports and Synopses in Support of Marketing Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Submission of Abbreviated Reports and Synopses in Support of Marketing Applications.'' This guidance, which implements section 118 of the Food and Drug Administration Modernization Act of 1997 (Modernization Act), is intended to assist applicants who wish to submit abbreviated reports and synopses in lieu of full reports for certain clinical studies, both in marketing applications for new products and in supplements to approved applications. The guidance describes which studies may be submitted as abbreviated reports or synopses and describes a format for such submissions.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or the Manufacturers Assistance and Communication Staff (HFM–42), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Debbie J. Henderson, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 1998 (63 FR 50251), FDA announced the availability of a draft version of this guidance for industry entitled ''Submission of Abbreviated Reports and Synopses in Support of Marketing Applications.'' The agency has finalized that draft guidance after considering comments received on the draft version. Only few comments were received, and minor changes were made to the draft version in an effort to make the document clearer.

This guidance implements section 118 of the Modernization Act, ''Data requirements for drugs and biologics,'' which directs FDA to issue guidance on when abbreviated study reports may be submitted in new drug applications (NDA's) and biologics license applications (BLA's) in lieu of full reports. Applicants have experienced difficulties in the past in deciding when a full study report is required by the reviewing body. For example, clinical drug and biologic product development programs often include numerous clinical studies and resulting data that are not intended to contribute to the evaluation of the effectiveness of a product for a particular use and are not needed to support information included

in labeling. Accordingly, such studies may be submitted as abbreviated reports or synopses, and this guidance is intended to facilitate their submission. This guidance is intended to provide guidance on the types of studies that may be submitted in abbreviated reports or synopses. The guidance also provides recommendations on the formats that should be used.

In the **Federal Register** of September 21, 1998 (63 FR 50241), FDA announced that it was submitting to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA) the collection of information entitled ''Application for FDA Approval to Market a New Drug—21 CFR Part 314—(OMB Control Number 0910–0001).'' In that notice, FDA stated that the draft guidance entitled ''Submission of Abbreviated Reports and Synopses in Support of Marketing Applications'' (a notice announcing the availability of the draft guidance was published in the same issue of the **Federal Register**) would reduce the industry burden for submitting marketing applications under § 314.56 (21 CFR 314.50). FDA estimated that this reduction in burden would be approximately 300 hours, and reduced the industry burden estimate for § 314.50 accordingly. The **Federal Register** notice also requested comments on the burden estimates for part 314 (21 CFR part 314). OMB received no comments on the notice and approved the information collection for part 314 until November 30, 2001. In addition, none of the comments received in response to the notice announcing the availability of the draft guidance pertained to information collection issues under the PRA.

This guidance represents the agency's current thinking on submission of full study reports, abbreviated reports, and synopses of information related to effectiveness for new drugs and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–23663 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Program Support Center (PSC), will periodically publish summaries of proposed information collection projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the PSC Reports Clearance Officer on (301) 443–2045.

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.

1. HHS Payment Management System Forms (PSC–270, formerly PMS–270) and (PSC–272, formerly PMS–272)—0937–0200—Extension

The PSC–270 (formerly PMS–270), Request for Advance or Reimbursement is used to make advances or reimbursement payments to grantees. It serves in place of the SF–270. Respondents: State and local governments; profit and nonprofit businesses and organizations receiving grants for HHS; Total Number of Respondents: 10; Frequency of Response: monthly; Average Burden per Response: 15 minutes; Estimated Annual Burden: 30 hours.

The PSC–272 (formerly PMS–272), Federal Cash Transactions Report, is used to monitor Federal cash advances to grantees and obtain Federal cash disbursement data. It serves in place of the SF–272. Respondents: State and local governments, profit and nonprofit businesses and institutions receiving grants from HHS; Total Number of Respondents: 16,800; Frequency of Response: quarterly; Average Burden per Reponse: 4 hours; Estimated Annual Burden: 268,800 hours.

Total Burden: 268,830 hours.

Send comments to Norman E. Prince, Jr., Acting PSC Reports Clearance Officer, Room 17A08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 3, 1999.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 99–23666 Filed 9–10–99; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice to Reopen the Public Comment Period for the Draft Recovery Plan for the Giant Garter Snake (*Thamnophis gigas*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period announced in the July 2, 1999 (64 FR 36033), notice of availability of the Draft Recovery Plan for the Giant Garter Snake (*Thamnophis gigas*) will be reopened for an additional 30 days. Substantial public interest in the draft plan led the Service to distribute additional copies and to provide additional opportunities for the public to comment on the plan. This draft recovery plan contains recovery criteria and actions for threatened giant garter snake. Additional species of concern that will benefit from recovery actions taken for the giant garter snake are also discussed in the draft plan. The Service reopens the comment period and solicits review and comment from the public on this draft plan.

DATE: Comments on the draft recovery plan received by October 13, 1999 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California (telephone (916) 414–6600); and U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 NE. 11th Avenue, Eastside Federal Complex,

Portland, Oregon 97232–4181 (telephone (503) 231–2071). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Wayne S. White, Field Supervisor, Ecological Services, at the above Sacramento address.

FOR FURTHER INFORMATION CONTACT: Diane Elam, Fish and Wildlife Biologist, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide recovery efforts, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed. The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The giant garter snake is an endemic species of wetlands in the Central Valley of California. Historically, giant garter snakes were found in the Sacramento and San Joaquin Valleys from the vicinity of Butte County southward to Buena Vista Lake, near Bakersfield in Kern County. Today, populations of the giant garter snake are found in the Sacramento Valley and isolated portions of the San Joaquin Valley. They historically inhabited natural wetlands and now occupy a variety of agricultural, managed, and natural wetlands including their waterways and adjacent uplands. This species is threatened by historic wetland habitat loss and resulting habitat fragmentation, and by continuing urban expansion. The objective of this draft recovery plan is to delist the giant garter snake through implementation of a variety of recovery measures including (1) habitat protection; (2) public participation, outreach and education; (3) habitat management and restoration; (4) surveying and monitoring; and (5) research.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 3, 1999.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–23510 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT080–09–1310–00]

Intent To Prepare an Environmental Assessment for Amending the Book Cliffs Resource Management Plan, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an environmental assessment for amending the Book Cliffs Resource Management Plan (RMP) by changing oil and gas leasing categories on crucial mule deer winter range.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Utah Bureau of Land Management, Vernal Field Office will be writing an Environmental Assessment (EA) on a proposed amendment to the Book Cliffs RMP that covers portions of Uintah County, Utah. The amendment would change the oil and gas leasing category on 162,500 acres of crucial mule deer winter range from Category 1 (Standard Stipulations) to Category 2 (Special stipulations) for protection of mule deer. Protective measures would include seasonal restrictions, rehabilitation requirements, siting of oil and gas wells, clustering of wells to reduce habitat disturbance and fragmentation, and other mitigative measures.

Alternatives identified at this time include the proposed action and the no action alternatives. Issues to be analyzed include impacts on wildlife, minerals, cultural resources and special status plants and animals. Potential impacts on Northern Ute tribal interests also will be considered.

DATES: Public scoping comments relating to issues and potential additional alternatives will be accepted for 30 days following the publication date of this notice. Comments must be submitted on or before October 13, 1999.

ADDRESSES: Scoping comments should be sent to Field Office Manager, Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078, ATTN: Book Cliffs RMP Amendment for Oil and Gas Leasing Categories on Crucial Deer Winter Range.

Comments, including names and street addresses of respondents will be available for public review at the BLM Vernal Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the Environmental Assessment and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: In 1992, the Utah Division of Wildlife Resources, in consultation with BLM wildlife biologists updated big game habitat delineations in the Book Cliffs. The updated delineations were the result of new and more detailed habitat information provided by field biologists. Analysis of this new information permitted more accurate identification and expansion of the boundaries of crucial mule deer winter range. Because mule deer crucial winter range has now been identified in areas presently offered for oil and gas leasing without protective measures for mule deer, a plan amendment is being considered.

FOR FURTHER INFORMATION CONTACT: Duane De Paepe (435) 781–4403 or e-mail: ddepaepe@ut.blm.gov.

Dated: September 1, 1999.

Linda S. Colville,

Acting State Director.

[FR Doc. 99–23679 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting October 13, 1999 at the Mon-Dak Heritage Center, 120 Third Ave. SE, Sidney, Montana starting at 8:00 a.m. Agenda topics include Bureau of Reclamation transfer of parcels along the Yellowstone River, and continued discussion on access, and the draft off-highway vehicle environmental impact statement.

The meeting is open to the public and the public comment period is set for 11:00 a.m. on October 13. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: September 1, 1999.

Timothy M. Murphy,

Miles City Field Manager

[FR Doc. 99–23671 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–930–1820–00]

Realignment of the BLM Office in Great Falls

AGENCY: Bureau of Land Management, DOI.

ACTION: None.

SUMMARY: This notice provides information about the decision to change the Great Falls Field Office to an Oil and Gas Field Station. This change became effective on August 1, 1999.

The Great Falls Field Office is Removed From the Organization Structure

The Great Falls Field Office has been converted to an oil and gas field station reporting to the Montana State Office, Division of Resources, Branch of Fluid Minerals, in Billings, Montana. This realignment will provide more efficient utilization of existing staff among the affected offices.

Other Programs Realigned

Responsibility for all other programs, other than oil and gas, has been reassigned to the Lewistown Field Office and its Havre Field Station. The Lewistown Field Office will assume responsibility for program activities in Pondera, Teton, Lewis and Clark (north of 46 degrees), Cascade, and Meagher counties. The Havre Field Station will assume responsibility for activities in Liberty, Glacier and Toole counties.

Oil and Gas Field Station Management

A supervisory position will be established in the OIL AND GAS FIELD STATION. The supervisor will report to the Montana State Office, Division of Resources, Branch of Fluid Minerals, in Billings, Montana.

FOR FURTHER INFORMATION CONTACT: Janet Singer, Deputy State Director, Division of Support Services, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107.

Dated: September 1, 1999.

Larry E. Hamilton.

State Director, Montana State Office.

[FR Doc. 99–23672 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–5700–77; WYW–6360 and WYW–145402]

Notices of Realty Action: Recreation and Public Purposes (R&PP) Act Classification in Lincoln County, WY (WYW–6360); and Federal Land Management Policy and Management Act (FLPMA) Direct Sale of Public Lands in Lincoln County, WY (WYW–145402)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice covers two separate but related realty actions. The first action is to amend the existing R&PP classification to include the disposal of land currently leased to Lincoln County for sanitary landfill lease (WYW–6360). The following public lands in Lincoln County, Wyoming are suitable for classification for conveyance under the Recreation and Public Purposes Act, as amended, (43 U.S.C. 869 *et seq.*).

Sixth Principal Meridian, Lincoln County, Wyoming

T. 24 N., R. 119 W.,
Sec. 4, Lot 48, Lot 47 of Tract 91.
The above land contains 40 acres.

The second action is the direct FLPMA sale of public land (WYW–145402), which is adjacent to the public lands involved in the R&PP lease. The Bureau of Land Management has determined that the lands described below are suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

Sixth Principal Meridian, Lincoln County, Wyoming

T. 24 N., R. 119 W.,
Lots 2, 3, 6, and 46 of Tract 91,
Lot 45 of Tract 94,
Lots 1 and 4 of Section 9.
The above land contains 93.78 acres.

FOR FURTHER INFORMATION CONTACT: Mark Hatchel, Realty Specialist, Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming, 83101, (307) 828–4507.

SUPPLEMENTARY INFORMATION (WYW–6360): The lands are not needed for Federal purposes. The conveyance of these lands to Lincoln County for sanitary landfill purposes is consistent with the Kemmerer Resource Management Plan and would be in the public interest. The planning document and environmental assessment covering

the proposed sale are available for review at the Bureau of Land Management, Kemmerer Field Office, Kemmerer, Wyoming. The R&PP patent (WYW–6360) when issued, will be subject to the following terms, conditions, covenants, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such minerals from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

4. The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances.

5. Lincoln County, its successors or assign, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from these patented lands, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

6. Existing rights of record including a right-of-way WYW–76620 to All West Communications for an access road.

7. The above described land has been used for solid waste disposal. Solid waste commonly includes small quantities of commercial hazardous waste and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements.

8. No portion of the land covered by such patent shall under any circumstances revert to the United States.

Conveyance of these lands to Lincoln County is consistent with applicable Federal and county land use plans and will help meet the needs of Lincoln County residents for solid waste disposal. Persons wishing to obtain detailed information on either of these actions may contact or write the Field Manager, Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming, 83101, (307) 828–4502.

Until October 28, 1999, interested parties may submit comments regarding the proposed conveyance or classification of the land to the Field Manager, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming, 83101.

Classification Comments

Interested parties may submit comments involving the request to amend the classification to include conveyance. Comments on the classification are restricted to whether the conveyance will maximize the future uses of the land, whether the use is consistent with local planning and zoning or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application for conveyance and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a sanitary landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective November 12, 1999.

SUPPLEMENTARY INFORMATION (WYW–145402): The existing landfill is being utilized by Lincoln County and is near capacity, resulting in the need for an expansion landfill area. The expansion lands are expected to provide an additional 50+ years of operation. The proposed sale is consistent with the Kemmerer Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no other known public values. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Kemmerer Field Office, Kemmerer, Wyoming. Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

Upon publication of this notice in the **Federal Register**, the FLPMA sale land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

Until October 28, 1999, interested parties may submit comments to the Field Manager, Kemmerer Field Office, Bureau of Land Management, 312 Hwy. 189 North, Kemmerer, WY.

Dated: August 12, 1999.

Jeff Rawson,

Field Manager.

[FR Doc. 99–23745 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Request for Reinstatement and Revision of a Previously Approved Information Collection

AGENCY: National Park Service, Interior.

ACTION: Notice of Request for Reinstatement and Revision of a Previously Approved Information Collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's intention to request a reinstatement for and revision to a previously approved information collection in support of its Concessions Management Program based on re-estimates.

DATES: Comments on this notice must be received no later than November 12, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact Cynthia Orlando, Program Manager, Concessions Program Division, National Park Service, 1849 C Street, NW., Washington, DC 20240 or call (202) 565–1210.

SUPPLEMENTARY INFORMATION:

Title: Concessioner Annual Financial Reports, 10–356 and 10–356A.

OMB Number: 1024–0029.

Expiration Date of Approval: December 31, 1995.

Type of Request: Reinstatement and revision of a previously approved information collection.

Abstract: The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park Systems. The concessioner Annual Financial Report (Forms 10–356 and 10–356A) provides concessioner financial information to the NPS as required by each concession contract. This information is necessary to comply with requirements placed on the NPS by the Congress.

Public Law 105–391 requires that the NPS exercise its authority in a manner consistent with a reasonable opportunity for a concessioner to realize a profit on its operation as a whole commensurate with the capital invested and the obligations assumed. It also requires that franchise fees be determined with consideration to both gross receipts and capital invested. The financial information collected is necessary to provide insight into and knowledge of the concessioner's operation so that this authority can be exercised appropriately and franchise fees determined in a timely manner without undue burden on the concessioner.

Estimate of Burden

Gross Receipts

Under $250,000: approximately 4 hours per response.

Over $250,000: approximately 16 hours per response.

Estimated Number of Respondents

Gross Receipts

Under $250,000—419 respondents.

Over $250,000—181 respondents.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents

Gross Receipts

Under $250,000—approximately 1.676 hours.

Over $250,000—approximately 2,896 hours.

Sample copies of this information collection can be obtained from Cynthia Orlando, Program Manager, Concessions Program Division, 1849 C Street, NW., Room 7313, Washington, DC 20240 at (202) 565–1210.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to Cynthia Orlando, Program Manager, Concessions Program Division, National Park Service, 1849 C Street, NW., Room 7313, Washington, DC 20240.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 1, 1999.

Linda Canzanelli,

Acting Associate Director, Park Operations and Education.

[FR Doc. 99–23766 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Effigy Mounds National Monument

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a Finding of No Significant Impact (FONSI) for the Environmental Assessment of the General Management Plan Amendment and Boundaries Study, Effigy Mounds National Monument, Iowa.

SUMMARY: Pursuant to the Council of Environmental Quality regulations and National Park Service (NPS) policy, the NPS prepared and made available for a 30-day public review a general management plan amendment/boundaries study and an environmental assessment (EA) for Effigy Mounds National Monument, Iowa. During the review period, the NPS held public meetings to discuss the document.

After the end of the 30-day public availability period, the NPS selected the preferred alternative as described in the document, and determined that implementation of the preferred alternative will not cause a significant environmental impact. In making that selection and determination, the NPS considered the information and analysis contained in the EA and the comments received during the public review period. The NPS has prepared a Finding of No Significant Impact (FONSI) for the project.

Because the GMP amendment/boundaries study is closely similar to projects for which the NPS would normally require an environmental impact statement, the NPS will make the FONSI available for a 30-day public review before implementation of the amendment/boundaries study begins.

DATES: The public review period for comment on the FONSI will end October 13, 1999.

SUPPLEMENTARY INFORMATION: Requests for copies of the FONSI, or for any additional information, should be directed to Superintendent Kate Miller, Effigy Mounds National Monument, 151 Highway 76, Harpers Ferry, Iowa 52146, Telephone: 319–873–3491. Comments on the FONSI may be sent to Superintendent Miller at this address or at e-mail: efmo__superintendent@nps.gov

Dated: September 2, 1999.

Catherine A. Damon,

Acting Regional Director, Midwest Region.

[FR Doc. 99–23764 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for General Management Plan; Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area; Notice of Availability

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub.L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a final environmental impact statement assessing the potential impacts of the proposed General Management Plan for Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, Shasta County, California. Once approved, the plan will guide the management of the unit over the next 15 years.

PROPOSED ACTION AND ALTERNATIVES: The final General Management Plan and Environmental Impact Statement presents a proposal and three alternatives for the management, use, and development of Whiskeytown Unit. The proposed general management plan includes provisions for preserving significant natural and cultural resources and for restoring the backcountry to more natural conditions through watershed restoration activities. The plan provides for increasing the range and depth of interpretive services, expands opportunities for backcountry use, and manages recreation at Whiskeytown Lake to provide opportunities for tranquil recreation experiences. To facilitate more tranquil experience, the use of personal watercraft at the reservoir is discontinued and enforcement of existing noise standards is increased.

Alternative A: No Action, would continue the current situation at Whiskeytown. Management focus would remain on the lake and natural

and cultural resource values would continue to decline because of the lack of human and financial resources for their management and protection.

Alternative B: Minimum Requirements, would be similar to Alternative C in terms of provisions for resource management and protection, but would provide fewer visitor services. The visitor service emphasis would continue to be focused on the lake and on safety and visitor protection, with only limited commitments to interpretation. The existing range of recreation uses, including the use of personal watercraft, would continue.

Alternative D: Expanded Recreation, retains the current management focus on active water-based recreation, and increases the capacity of the lake to accommodate use by adding a major new developed area near the mouth of Boulder Creek. Major new utility infrastructure would be required to support this development, and South Shore Drive would be widened, realigned, and paved to provide access. The existing spectrum of recreation uses on the lake, including use of personal watercraft, would be retained. However, a zoning plan would separate the reservoir into a low-speed zone, where personal watercraft use would be discouraged, and an unrestricted zone where all types of activities would be accommodated.

Background

The Draft EIS/GMP was released for a 75-day public review ending November 30, 1998. Altogether nine public meetings were held in local communities. Both the Draft and Final documents evaluate the same Proposed Action and Alternatives. The environmental consequences of the alternatives are fully documented in the Final EIS. No significant adverse impacts are foreseen from the three Action Alternatives, because the plans include provisions to avoid or mitigate potentially significant impacts. However, the No-Action Alternative would result in significant long-term impacts to natural and cultural resources due to insufficient management and protection.

SUPPLEMENTARY INFORMATION: Written comments or questions regarding the final general management plan and environmental impact statement should be directed to the Superintendent, Whiskeytown NRA, PO Box 188, Whiskeytown, California 96095. Copies may be requested by contacting the Superintendent at (530) 241–6584. The no-action period for the FEIS/GMP will extend for thirty days after the Environmental Protection Agency's notification of the filing of the document is published in the **Federal Register**. Subsequently, the National Park Service will publish a notice of the Record of Decision in the **Federal Register**. The official responsible for the decision is the Regional Director, Pacific West Region; the official responsible for implementation is the Superintendent, Whiskeytown Unit.

Dated: September 1, 1999.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 99–23763 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Primary Restoration Plan for Santa Cruz Island, Channel Islands National Park, Santa Barbara County, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Council on Environmental Quality regulations (40 CFR 1508.22), the National Park Service intends to prepare an Environmental Impact Statement for a Primary Restoration Plan that focused on removing non-native species from Santa Cruz Island, Channel Islands National Park, California. During the ensuing conservation planning-environmental analysis process, comprehensive management alternatives will be developed which will address recovery of the island's natural communities. Throughout the restoration planning process will be conducted in consultation with affected federal agencies, State and local governments, tribal groups, and interested organizations and individuals.

BACKGROUND: The National Park Service completed a General Management Plan (GMP) and Environmental Impact Statement for Channel Islands National Park in 1985. The park's Resources Management Plan was approved in 1994 (and last updated in 1998). Both documents set clear direction and priorities for responding to invasive species. This focused restoration planning effort is intended to expand and refine that management direction, with the focused objective of preparing a Primary Restoration Plan and Environmental Impact Statement (PRP/EIS) specific to Santa Cruz Island. The PRP/EIS will identify, analyze, and select the immediate, critical management actions necessary to initiate recovery of the island's natural communities. Of special concern is the pressing need to address alternative methods for removal of feral pigs (*Sus scrofa*) and control of fennel (*Foeniculum vulgare*), an invasive alien plant species. Based upon scientific review, at this time it is anticipated that bringing management and control efforts to bear primarily upon these two species would facilitate the restoration of many other native ecosystem components. The fennel and feral pig initiatives will be implemented in collaboration with The Nature Conservancy, Santa Cruz Island Preserve.

SCOPING: The NPS is hereby initiating the scoping phase with a request for comments and information from interested individuals, organizations, and agencies. Responses are encouraged, and may address current issues and concerns, relevant research, immediate management options, mitigation strategies, future direction for recovery efforts, and other factors relevant to a comprehensive restoration planning process. Written comments must be postmarked not later than November 30, 1999, and should be directed to the Superintendent, Channel Islands National Park, 1901 Spinnaker Dr., Ventura, CA 93001. In addition, public scoping sessions are scheduled for October 20 (Ventura) and October 27 (Santa Barbara). Details as to time and location will be announced via local and regional press releases, notices distributed to area libraries, and direct mailings.

SUPPLEMENTARY INFORMATION: Periodic information updates about various aspects of the restoration planning process will be distributed via direct mailings, the park's website (http://www.nps.gov/chis/naturalresources/restoration.html), and regional and local news media. To request placement on the PRP/EIS mailing list, interested parties may contact Mr. Steve Ortega, Restoration Biologist, at (805) 658–5784 or CHIS__Restoration@NPS.gov.

REVIEW AND DECISION PROCESS: The Draft PRP/EIS is anticipated to be available for public review and comment during winter-spring, 1999–2000. Availability of the Draft document for review and written comment will be announced by formal Notice in the **Federal Register**, through local and regional news media, the internet, and direct mailing. At this time it is anticipated that the Final PRP/EIS will be completed during October, 2000. Subsequently, notice of an approved Record of Decision would be published in the **Federal Register** not sooner than thirty (30) days after the Final document is distributed. This is

expected to occur by December, 2000. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Channel Islands National Park.

Dated: August 31, 1999.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 99–23765 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Prepare an Environmental Impact Statement to Amend the General Management Plan for the Backcountry of Denali National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: General Management Plan Amendment and Environmental Impact Statement, Denali National Park and Preserve, Alaska.

SUMMARY: The National Park Service (NPS) is preparing an amendment to the general management plan, a backcountry management plan and an accompanying environmental impact statement (EIS) for Denali National Park and Preserve. The purpose of the management plan and EIS is to formulate a comprehensive plan for the backcountry, including designated wilderness, of Denali National Park and Preserve that will provide management direction over the next 15–20 years. This new management plan will amend the 1986 General Management Plan for the backcountry of Denali National Park and Preserve. The backcountry of Denali National Park and Preserve is defined to include all of the park except for those areas designated specifically for development in the entrance area and along the road corridor. Many issues to be addressed in the backcountry management plan would affect the entire park, including developed areas. The NPS has initiated this management plan and EIS to address the rapidly growing level and diversity of uses, resource management needs, and the anticipated demand for future uses not foreseen or addressed in the 1986 General Management Plan.

Primary issues that the management plan and EIS will address are types and levels of visitor use, the visitor experience, resource protection, subsistence use, facility development and maintenance, administration of the backcountry management program, coordination with other land management agencies, research and other scientific uses, motorized uses including snowmachine and aircraft use, and fire management.

The proposed action in the management plan and EIS will include guidelines for the types and levels of a variety of backcountry uses and outline methods for resource protection. The proposal will allocate visitor use of the backcountry to prevent user conflicts and to continue providing for high quality visitor experiences and diverse opportunities. The proposed action will include zoning to provide for a spectrum of visitor opportunities ranging from motorized use areas to ''quiet zones'' where motorized uses would be prohibited. This will address visitor and management concerns about the existing conditions in which user conflicts occur.

Possible alternatives in the EIS will propose variations in the types and levels of backcountry uses. One alternative to the proposed action will be to provide for expanded uses similar to the level and types of uses in national parks in the lower 48. A second alternative will limit recreational and other backcountry uses so that Denali National Park and Preserve would be more comparable to other large national parks in Alaska with less visitor use. A no action alternative will also be included.

The NPS is seeking ideas on possible alternatives. The NPS will hold open house scoping sessions in fall 1999 in Fairbanks, the Denali National Park area, Talkeetna/Trapper Creek, and Anchorage. Specific dates, times, and locations of these scoping sessions will be announced in area newspapers. The NPS will continue to meet with other government agencies, organizations, and the public for information sharing.

The draft management plan/EIS is anticipated to be available for public review in late summer 2000. Public meetings will be scheduled in the Denali National Park/Healy area, the Talkeetna/Trapper Creek area, Fairbanks, and Anchorage, Alaska, after release of the draft management plan/EIS. The final EIS is expected to be released during summer 2001.

Interested groups, organizations, individuals and government agencies are invited to comment on the plan. 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 administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The EIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*) and its implementing regulations at 40 CFR part 1500.

FOR FURTHER INFORMATION CONTACT: Stephen P. Martin, Superintendent, Denali National Park and Preserve, PO Box 9, Denali Park, Alaska 99755. Telephone (907) 683–2294.

Dated: September 1, 1999.

John Quinley,

Acting Regional Director, Alaska.

[FR Doc. 99–23762 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment for Continuing Operations of 6 Gas Wells; Pantera Energy Company, (Lake Meredith National Recreation Area), Hutchinson County, TX

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Pantera Energy Company a Plan of Operations for the continuing operations of 6 gas wells within Lake Meredith National Recreation Area, Hutchinson County, Texas.

The Plan of Operation and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith National Recreation Area/Alibates Flint Quarries National Monument, 419 East Broadway, Fritch, TX. Copies are available from the Superintendent, Lake Meredith National Recreation Area/Alibates Flint Quarries National Monument, Post Office Box 1460, Fritch, Texas 79036 and will be sent

upon request, subject to a charge for copying.

John Benjamin,

Superintendent.

[FR Doc. 99–23761 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 4, 1999. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 28, 1999.

Carol D. Shull,

Keeper of the National Register.

FLORIDA

Charlotte County

El Jobean Hotel, 4381 Garden Rd., El Jobean, 99001203

Putnam County

Bostwick School, 125 Tillman St., Bostwick, 99001204

IOWA

Appanoose County

Second Baptist Church (Centerville MPS), 422 S. 18th St., Centerville, 99001223

Dubuque County

Basilica of St. Francis Xavier, Church and Rectory, 114 2nd St. SW, Dyersville, 99001205

St. Boniface of New Vienna Historic District, 7401 Columbus St., New Vienna, 99001207

Keokuk County

Irwin, John N. and Mary L. (Rankin), House, 633 Grand Ave., Keokuk, 99001206

MISSOURI

Lafayette County

Stramcke, Thomas Talbot and Rebecca Walton Smithers, House, 15834 Highway O, Lexington vicinity, 99001208

NEW YORK

Dutchess County

Mumford, Lewis, House, 187 Leedsville Rd., Amenia, 99001209

SOUTH DAKOTA

Clay County

South Dakota Department of Transportation Bridge No. 14–120–222 (Historic Bridges in South Dakota MPS), Local Rd. over Ash Creek, Wakonda vicinity, 99001218

Deuel County

Kliegle Garage, Lots 1 and 2 of the Original Townsite of Goodwin, Goodwin, 99001213

Turner County

South Dakota Department of Transportation Bridge No. 63–197–130 (Historic Bridges in South Dakota MPS), Local Rd. over E Fork of Vermillion R., Davis vicinity, 99001210

South Dakota Department of Transportation Bridge No. 63–177–160 (Historic Bridges in South Dakota MPS), Local Rd. over Turkey Ridge Creek, Hurley vicinity, 99001211

South Dakota Department of Transportation Bridge No. 63–198–181 (Historic Bridges in South Dakota MPS), Local Rd. over East Fork of Vermillion R., Davis vicinity, 99001212

South Dakota Department of Transportation Bridge No. 63–186–020 (Historic Bridges in South Dakota MPS), Local Rd. over Long Creek, Parker vicinity, 99001214

South Dakota Department of Transportation Bridge No. 63–132–040 (Historic Bridges in South Dakota MPS), Local Rd. over unnamed stream, Parker vicinity, 99001215

South Dakota Department of Transportation Bridge No. 63–210–282 (Historic Bridges in South Dakota MPS), Local Rd. over east Fork of Vermillion R., Centerville vicinity, 99001216

South Dakota Department of Transportation Bridge No. 63–052–030 (Historic Bridges in South Dakota MPS), Local Rd. over West Fork of Vermillion R., Marion vicinity, 99001217

WASHINGTON

Mason County

Big Creek Archeological Site—45MS100, Address Restricted, Hoodsport vicinity, 99001219

WISCONSIN

Ozaukee County

Port Washington Light Station, 311 E. Johnson St., Port Washington, 99001222

Walworth County

Horticultural Hall, 330 Broad St., Lake Geneva, 99001220

WYOMING

Carbon County

Downtown Rawlins Historic District (Boundary Increase), Roughly along 5th St., from W. Spruce to W. Cedar, Rawlins, 99001221

A request for Removal has been made for the following resource:

KANSAS

Reno County

Plevna General Store, 3rd and Main, Plevna, 88002968

[FR Doc. 99–23767 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Custer County, SD in the Possession of the South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Custer County, SD in the possession of the South Dakota State Archaeological Research Center, Rapid City, SD.

A detailed assessment of the human remains was made by South Dakota State Archaeological Research Center (SARC) professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation and the Pawnee Indian Tribe of Oklahoma.

Between 1935 and 1950, human remains representing three individuals were recovered from the Phelps site (39CU206) located on the left bank of Battle Creek, Custer County, SD by Mrs. Phelps, the private landowner of the site. No known individuals were identified. The seven associated funerary objects include one unidentifiable mammal rib, two cedar fragments, one limestone bead, charcoal, one stone biface, and one stone uniface.

Based on the associated funerary objects and the manner of interment, these individuals have been identified as Native American. The associated funerary objects, manner of interment, and the remainder of the artifact assemblage from the site, including side-notched projectile points, freshwater shells, large bifaces, and ceramics, indicate the burials date to the Upper Republican Aspect of the Central Plains Tradition (1000-1500 A.D.).

Based on continuities of material culture, architecture, skeletal morphology, oral tradition, and historical evidence, the cultural affiliation of the Phelps site and the individuals listed above can be affiliated with the Arikara. In 1870, the Mandan, Hidatsa, and Arikara tribes were moved to the Fort Berthold Indian Reservation in North Dakota and are now known as the Three Affiliated Tribes of the Fort Berthold Reservation.

Based on the above mentioned information, officials of the South Dakota State Archaeological Research Center have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the South Dakota State Archaeological Research Center have also determined that, pursuant to 43 CFR 10.2 (d)(2), the seven objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the South Dakota State Archaeological Research Center have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Three Affiliated Tribes of the Fort Berthold Reservation.

This notice has been sent to officials of the Three Affiliated Tribes of the Fort Berthold Reservation and the Pawnee Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Renee Boen, Curator, State Archaeological Center, South Dakota Historical Society, P.O. Box 1257, Rapid City, SD 57709-1257; telephone: (605) 394-1936, before October 13, 1999. Repatriation of the human remains and associated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation may begin after that date if no additional claimants come forward.

Dated: August 23, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–23770 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Wisconsin in the Possession of the State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Wisconsin in the possession of the State Historical Society of Wisconsin, Madison, WI.

A detailed assessment of the human remains was made by State Historical Society of Wisconsin professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin.

In 1966, human remains representing a minimum of two individuals were recovered from site 47–TR–31, Mound 26, HB–1, also known as the Trempealeau Lakes or Schwerts Mound Group, Trempealeau County, WI during excavations conducted by field crews of the State Historical Society of Wisconsin. No known individuals were identified. The 21 associated funerary objects include bracelets, rings, fabric fragments, cowrie shells, tubular beads, seed beads, and coin earrings.

Based on historic material culture, including a wood coffin, associated with these burials and historic associated funerary objects, these individuals have been identified as Native American from early this century (1900-1920 A.D.). Based on the material culture and Ho-Chunk oral history, these individuals have been identified as Ho-Chunk.

Based on the above mentioned information, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 21 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Ho-Chunk Nation of Wisconsin.

This notice has been sent to officials of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Ms. Jennifer Kolb, Director, Museum Archeology Program, State Historical Society of Wisconsin, 816 State Street, Madison, WI 53706; telephone (608) 264–6560; e-mail: jlkolb@mail.shsw.wisc.edu before October 13, 1999. Repatriation of the human remains and associated funerary objects to the Ho-Chunk Nation of Wisconsin may begin after that date if no additional claimants come forward.

Dated: August 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–23768 Filed 9–12–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service, Interior.

Notice of Intent to Repatriate Cultural Items in the Possession of the State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the State Historical Society of Wisconsin which meet the definition of ''sacred object'' and ''object of cultural patrimony'' under Section 2 of the Act.

The 28 cultural items consist of one cloth wrapper, two cane flutes, nine ermine skins, two fire-sets, a gourd rattle, a gourd bowl, an iron spear point, three war clubs, a rattle, a quillwork strip, a calico bundle containing a bird, a mat wrapper, a packet of roots, a buckskin bag, a packet of green paint, and a buckskin wrapper. Collectively, these cultural items comprise a Ho-Chunk Stealer Bundle.

In 1930, Charles Brown, representing the State Historical Society of Wisconsin, purchased the Stealer Bundle from John Blackhawk of Black River Falls, WI.

Consultation evidence presented by the Ho-Chunk Nation of Wisconsin confirms that all cultural items listed above are used in the Eagle Clan Lodge ceremony. Representatives of *wa ma nu ka cha bra* (Eagle Clan) have stated that these items are needed by traditional religious leaders for the practice of Native American religion by their present-day adherents. Representatives of the Ho-Chunk Nation of Wisconsin and the Eagle Clan of the Ho-Chunk Nation of Wisconsin have indicated that the Stealer Bundle and all associated items are owned communally by the clan as a whole and no individual had

the right to sell or otherwise alienate the Stealer Bundle or and associated items.

Based on the above-mentioned information, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (d)(3), these 28 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2 (d)(4), these 28 cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Ho-Chunk Nation of Wisconsin.

This notice has been sent to officials of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Ms. Jennifer Kolb, Director, Museum Archeology Program, State Historical Society of Wisconsin, 816 State Street, Madison, WI 53706; telephone (608) 264-6560; e-mail: jlkolb@mail.shsw.wisc.edu before October 13, 1999. Repatriation of these objects to the Ho-Chunk Nation of Wisconsin may begin after that date if no additional claimants come forward.

Dated: August 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–23769 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

During the 1850s, human remains representing two individuals were removed from an unknown site by P. Gregg. In 1893, these human remains were acquired by the Academy of Natural Sciences, Philadelphia, PA. In 1966, these remains were placed on loan at the University of Pennsylvania Museum and were officially transferred into the University of Pennsylvania Museum's collections in 1998. No known individuals were identified. No associated funerary objects are present.

Based on original accession information, these individuals have been identified as Native American. Also based on original accession information, these individuals have been identified as Winnebago. No further information exists for these individuals.

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Lastly, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

This notice has been sent to officials of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324; telephone: (215) 898-4051, fax (215) 898-0657, before October 13, 1999. Repatriation of the human remains to the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska may begin after that date if no additional claimants come forward.

Dated: August 23, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–23771 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–12]

Frank D. Jackson, M.D.; Revocation of Registration

On December 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Frank D. Jackson, M.D. (Respondent) of Boston, Massachusetts, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AJ8888806 pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that his continued registration would be inconsistent with the public interest.

By letter dated January 28, 1999, Respondent requested a hearing on the issues raised by the order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On February 19, 1999, Judge Bittner issued an Order for Prehearing Statements. The Government filed its prehearing statement on March 10, 1999, but Respondent did not file a prehearing statement.

On April 20, 1999, the Government filed a Motion for Summary Disposition and a Motion to Terminate the Proceedings. The Government's motions alleged that (1) Respondent is not currently licensed to handle controlled substances in the state where he is registered with DEA, and (2) Respondent's failure to file a prehearing statement acts as a waiver of his right to a hearing. Respondent was given until May 18, 1999, to file a response to the Government's motions, yet he did not do so.

On May 27, 1999, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacks authorization to handle controlled substances in the Commonwealth of Massachusetts; granting the Government's Motion for Summary Disposition; recommending that

Respondent's DEA Certificate of Registration be revoked; and concluding that having granted the Government's Motion for Summary Disposition, it is unnecessary to rule on the Government's Motion to Terminate. Neither party filed exceptions to her opinion, and on June 28, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Commonwealth of Massachusetts, Board of Registration in Medicine suspended Respondent's Massachusetts medical license, effective March 10, 1999. As a result, the Deputy Administrator concludes that Respondent is not currently authorized to practice medicine in the Commonwealth of Massachusetts, and therefore,it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in the Commonwealth of Massachusetts, where he is registered with DEA. As a result, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is not currently authorized to handle controlled substances in California. Therefore, it is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial proceeding involving evidence and cross-examination of witnesses is not required. See Jesus R. Juarez, M.D., 62 FR 14945 (1997). The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. *See Philip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *see also NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers*, AFL–CIO, 549 F.2d 634 (9th Cir. 1977).

Since DEA does not have the statutory authority to maintain Respondent's DEA registration because he is not currently authorized to handle controlled substances in Massachusetts, the Deputy Administrator concludes that it is unnecessary to determine whether Respondent's continued registration would be inconsistent with the public interest, as alleged in the Order to Show Cause.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AJ8888806, previously issued to Frank D. Jackson, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective October 13, 1999.

Dated: August 24, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–23669 Filed 9–10–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

KK Pharmacy; Revocation of Registration

On April 2, 1999, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to KK Pharmacy, of Osage Each, Missouri, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration BK1488104 pursuant to 21 U.S.C. 824(a)(1), 824(a)(4) and 824(a)(5), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that the pharmacy materially falsified an application for DEA registration, is continued registration would be inconsistent with the public interest, and it has been mandatorily excluded from participation in a program pursuant to 41 U.S.C. 1320a–7(a). The order also notified KK Pharmacy that should no request for a hearing be field within 30 days of receipt of the Order to Show Cause, its hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on April 10, 1999. No request for a hearing or any other reply was received by DEA from KK Pharmacy or anyone purporting to represent it in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing have been received, concludes that KK Pharmacy is deemed to have waived its hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Daniel J. Vossman is the owner of KK Pharmacy and is also its pharmacist-in-charge. KK Pharmacy is located in Missouri and currently possesses DEA Certificate of Registration BK1488104.

In 1980, Mr. Vossman was the vice president of a corporation which owned several pharmacies and a wholesale distributor in Kansas. In June of 1980, Mr. Vossman admitted to the Kansas Pharmacy Board (Kansas Board) that on paper, he had been transferring the controlled substance Eskatrol from the distributor to one of the pharmacies, but in fact, he had been giving the drug to his wife for her personal use without a physician's authorization. According to Mr. Vossman, he diverted approximately 1,300 dosage units of the drug this way. A subsequent audit revealed a shortage of 1,300 dosage units of the drug this way. A subsequent audit revealed a shortage of 1,897 dosage units of Eskatrol from the pharmacy and 150 dosage units from the distributor. A later investigation revealed that prescriptions could not be found for many Schedule II prescription numbers and many Schedule II prescriptions that were on hand were unsigned. In addition, an audit covering the period January 1, 1977 to August 25, 1980, revealed discrepancies for a number of Schedule II controlled substances, including a shortage of 2,207 dosage units of Eskatrol or 53.2% for which it was accountable.

As a result, on December 3, 1980, the Kansas Board issued an Order effective October 1, 1980, which suspended Mr. Vossman's pharmacist registration for 90 days, 60 days of which were suspended, and then placed his registration on probation for one year. In addition, the wholesale distributor's registration was limited to non-

controlled substances only. Since the wholesale distributor was not longer authorized to handle controlled substances by the state, Mr. Vossman surrendered the wholesale distributor's DEA Certificate of Registration on January 12, 1981.

On December 5, 1990, Mr. Vossman filed an application to review KK Pharmacy's DEA Certificate of Registration BK1488104. Mr. Vossman answered ''No'' to the question on the application (hereinafter referred to as the liability question) which asks, ''If the applicant is a * * * pharmacy, has any officer, partner, stockholder or proprietor * * * ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?''

Between July 22, 1988 and December 16, 1997, the Missouri Board of Pharmacy (Missouri Board) conducted ten inspections of KK Pharmacy. Throughout these inspections, various repeated violations of state and federal controlled substance laws were noted, such as controlled substances were dispensed on a number of occasions without a physician's authorization, required information was missing from prescriptions, prescriptions were missing from the pharmacy's files, and a photocopied prescription for a Schedule II controlled substance was filled by the pharmacy. As a result of these inspections, the Missouri regulatory authorities took action on several occasions against KK Pharmacy's state permits.

On August 17, 1993, the Missouri Board issued a Stipulation and Agreement which placed the pharmacy permit of KK Pharmacy on probation from August 27, 1993 through August 26, 1998. This agreement was declared null and void in November 1996.

Mr. Vossman submitted another renewal application for his DEA Certificate of Registration on November 28, 1993. Again, Mr. Vossman Answered ''No'' to the liability question, and also answered ''No'' to another liability question which asks whether, ''the applicant [has] ever * * * had a State professional license or controlled substance registration revoked, suspended, restricted or denied or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or place on probation?''

On February 2, 1994, KK Pharmacy entered into a Memorandum of Understanding with the Missouri Bureau of Narcotics and Dangerous Drugs (Missouri BNDD). Mr. Vossman agreed that for five years he would provide the Missouri BNDD with prescription and refill information on a quarterly basis; permit access to pharmacy records by the Missouri Board and the Missouri BNDD; and meet all conditions set forth in the Stipulation and Agreement with the Missouri Board.

KK Pharmacy failed to provide the Missouri BNDD with prescription information as required by the Memorandum of Understanding, and failed to renew its Missouri controlled substance registration. As a result, on February 16, 1995, KK Pharmacy entered into a second Memorandum of Understanding with the Missouri BNDD, in which Mr. Vossman agreed to take a completed and accurate inventory by hand of all controlled substances upon the signing of the Memorandum. In addition, Mr. Vossman agreed that for seven years he would, among other things, take an exact count of all controlled substances on hand every six months; maintain a perpetual inventory of all controlled substances; provide the Missouri BNDD with prescription and refill information on a quarterly basis; maintain all records in accordance with state and federal laws; maintain Schedule II order forms in accordance with federal law; not dispense Schedule II controlled substances without a signed prescription; not partially fill Schedule II prescriptions; and meet annually with the Missouri BNDD.

On November 15, 1996, a 29-count felony information was filed against Mr. Vossman in the Circuit Court of Camden County, Missouri alleging that Mr. Vossman, d/b/a KK Pharmacy made false statements to receive health care payments. Two of these counts involved controlled substances. On October 1, 1997, Mr. Vossman pled guilty to one count of the information, and was sentenced to probation for five years.

On November 22, 1996, Mr. Vossman submitted an application to renew KK Pharmacy's DEA Certificate of Registration. On this application, Mr. Vossman answered ''Yes'' to the liability questions. In his explanation accompanying the application, Mr. Vossman indicated that he had been charged with making a false statement to receive a health care benefit, and that he had signed a Memorandum of Understanding with the Missouri BNDD on February 16, 1995, but that this Memorandum was being contested in the Circuit Court of Cole County, Missouri. However, Mr. Vossman failed to mention the 1980 suspension and probation of his license to practice pharmacy in Kansas, his surrender in 1981 of the wholesale distributor's DEA registration, or the 1994 Memorandum of Understanding with the Missouri BNDD.

By letter dated August 16, 1996, the Missouri Department of Health proposed the denial of KK Pharmacy's application for renewal of its controlled substance registration. The letter stated that Mr. Vossman has failed to provide satisfactory proof that the managing officers of KK Pharmacy are of good moral character. The letter further stated that registration of KK Pharmacy is inconsistent with the public interest because the pharmacy has not maintained effective controls against the diversion of controlled substances, has not operated in compliance with applicable state and federal law and has provided false or fraudulent material information on its application for registration.

Ultimately, by letter dated December 3, 1996, Mr. Vossman was advised that KK Pharmacy's application for a state controlled substance registration was denied and that he had 30 days to request a hearing. The letter listed as reasons for the denial that Mr. Vossman made a false statement on an application for a Missouri controlled substance registration; between June 1994 and August 1995, KK Pharmacy filled or refilled 81 controlled substance prescriptions without a physician's authorization; the pharmacy did not maintain 25 controlled substance prescriptions on file for a period of two years; it filled two Schedule II prescriptions in excess of a 30-day supply without a physician's written justification; it filled four Schedule II prescriptions for which there was no signed prescription order; and it filled two Schedule II prescriptions without the dispenser's signature. Mr. Vossman requested a hearing on the denial.

On July 16, 1997, Mr. Vossman and the Missouri BNDD filed a 'Joint Stipulation of Facts, With Proposed AHC [Administrative Hearing Committee] Conclusions of Law and Proposed AHC Order and with Joint Agreement and Terms of Discipline,'' hereinafter referred to as the Joint Agreement. In this filing the parties stipulated that KK Pharmacy's Missouri controlled substance registration expired on July 31, 1994 and was not renewed until February 16, 1995, yet the pharmacy continued to dispense controlled substances. The parties also stipulated that KK Pharmacy furnished false information to the Missouri BNDD on three applications and dispensed 27 refills of generic Darvocet N–100 to a

customer in 1992 and 1993 without a physician's knowledge or authorization.

As a result of this Joint Agreement, KK Pharmacy was issued a Missouri controlled substance registration which was placed on probation for five years subject to various terms and conditions, including that KK Pharmacy will maintain a perpetual inventory for all controlled substances using the Pharmacy's computer, conduct background checks on all current and future pharmacist employees; maintain records showing the dates and times each pharmacy employee works; employ a consulting pharmacist to review the pharmacy's controlled substance handling; provide the Missouri BNDD with prescription and refill information on a quarterly basis; not accept any Schedule II telephone prescription; verify that all information on controlled substance prescriptions is complete and accurate; and verify on a daily basis a printout of prescription data for that day.

On November 20, 1997, the consulting pharmacist filed her first report with the Missouri BNDD noting that KK Pharmacy seemed to be making efforts to comply with the Joint Agreement, however she was still finding problems with the Schedule III through V perpetual inventory resulting in an ability to reconcile the drugs. The consulting pharmacist submitted her second report on March 10, 1998, in which she noted a decline in KK Pharmacy's compliance with the Joint Agreement and many violations of pharmacy law. The consulting pharmacist stated in her report that ''I must also say that over the last three months I have felt that there have been attempts to hide or cover missing information needed by me to make an accurate assessment of the pharmacy's compliance with the agreement.'' The consulting pharmacist further ''found it to be virtually impossible to reconcile the inventory in this pharmacy because there have been so many errors and corrections that there is no way to trace [the drugs.]'' The consulting pharmacist concluded that ''[o]ver the last three months I have felt that Mr. Vossman has not taken the initiative to be responsible for the pharmacy, but has expected that I or the technicians would come in and do the job for him[,]'' and that ''I am not sure that Mr. Vossman has the incentive or the skills needed to comply with the terms of this agreement.''

By letter dated February 27, 1998, Mr. Vossman was notified by the Department of Health and Human Services that he was being excluded from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs for a period of five years pursuant to 42 U.S.C. 1320a–7(a).

On March 11, 1998, a Felony Conviction Complaint was filed with the Missouri Board stating that Mr. Vossman's conviction is an offense reasonably related to the qualifications, functions, or duties of a pharmacist or involves moral turpitude, and asking the Missouri Board to conduct a hearing and to impose appropriate discipline. Following a hearing, not attended by Mr. Vossman or a representative, the Missouri Board issued its Findings of Fact, Conclusions of Law, and Order of Discipline (Order) on April 23, 1998, revoking Mr. Vossman's pharmacist license. Thereafter, on April 30, 1998, Mr. Vossman filed a Petition for Review of the Missouri Board's Order stating that he did not attend the disciplinary hearing because he was not aware of it, and even had he been aware of the hearing, he would not have had sufficient time to prepare for it. In addition, Mr. Vossman filed a motion on April 30, 1998, in the Circuit Court of Cole County, Missouri seeking a stay of the Missouri Board's Order pending resolution of the appeal. The Court granted Mr. Vossman's motion for a stay on April 30, 1998.

On June 18, 1998, Mr. Vossman filed a request for rehearing while his petition for review of the Missouri Board's revocation of his pharmacist license was pending. The Missouri Board withdrew its April 23, 1998 Order, and a hearing was held on July 9, 1998. On July 16, 1998, the Missouri Board issued its Findings of Fact, Conclusions of Law, and Order of Discipline (Order) revoking Mr. Vossman's pharmacist license and prohibiting him from applying for reinstatement of his license for three years. Mr. Vossman again filed a petition for review of the Missouri Board's Order on July 24, 1998, in the Circuit Court of Cole County, Missouri. Mr. Vossman also filed a motion in the Circuit Court of Cole County, Missouri, requesting a stay of the Missouri Board's Order pending appeal, which was granted on July 27, 1998. There is no further evidence in the file regarding the disposition of this matter.

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a find that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation or denial of his registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) or Title 42.

The Deputy Administrator finds that it is well-settled that a pharmacy operates under the control of owners, stockholders, pharmacists or other employees, and therefore the acts of these individuals are relevant in determining whether grounds exist to revoke a pharmacy's DEA Certificate of Registration. See Rick's Pharmacy, Inc., 62 FR 42595 (1997), Maxicare Pharmacy, 61 FR 27368 (1996); Big-T Pharmacy, Inc. 47 FR 51830 (1982).

Pursuant to 21 U.S.C. 824(a)(1), a registration may be revoked if the registrant has materially falsified an application for registration. DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See, Martha Hernandez, M.D., 62 FR 61145 (1997); Herbert J. Robinson, M.D. 59 FR 6304 (1994).

On KK Pharmacy's renewal application dated December 5, 1990, Mr. Vossman answered ''No'' to the liability question, even though his Kansas pharmacist license had been suspended and then placed on probation in 1980, and he surrendered his wholesale distributor's DEA registration in 1981.

Mr. Vossman also falsified KK Pharmacy's renewal application dated November 28, 1993, by again answering ''No'' to the liability question. Like the 1900 renewal application, Mr. Vossman should have disclosed the action against his Kansas pharmacist license in 1980 and the surrender of his wholesale distributor DEA registration in 1981. In addition, Mr. Vossman should have answered the liability question in the affirmative based upon the Missouri Board's action in August 1993 placing

the pharmacy permit of KK pharmacy on probation for five years. While the Missouri Board's action was ultimately declared null and void in November 1996, it was in effect in November 1993 when Mr. Vossman submitted the renewal application.

Finally, while Mr. Vossman did answer ''Yes'' to the liability question on KK Pharmacy's renewal application dated November 22, 1996, he failed to note in his explanation for his response that he had entered into a Memorandum of Understanding with the Missouri BNDD in 1994; that his Kansas pharmacist license was suspended and then placed on probation in 1980; and that he surrendered the DEA registration of his wholesale distributor in 1981.

The Deputy Administrator concludes that Mr. Vossman materially falsified KK Pharmacy's 1990, 1993 and 1996 renewal applications for its DEA Certificate of Registration, and therefore grounds exists to revoke the pharmacy's DEA registration.

Next, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, the file is replete with actions against KK Pharmacy and Mr. Vossman by various state licensing agencies. Mr. Vossman's Kansas pharmacist license was suspended in 1980 and then placed on probation. KK Pharmacy entered into a Memorandum of Understanding with the Missouri BNDD in 1994, and again in 1995. Action was taken by the Missouri BNDD to deny KK Pharmacy's state controlled substance registration in December 1996. The pharmacy was ultimately issued a new state controlled substance registration in July 1997 that was subject to various terms and conditions for five years. Then in 1998, Mr. Vossman's pharmacist permit was revoked by the Missouri Board, but that revocation was stayed pending appeal of the Missouri Board's Order.

Factors two and four, KK Pharmacy's experience in dispensing controlled substances and its compliance with applicable laws, are clearly relevant in determining the public interest. In 1980, Mr. Vossman diverted controlled substances from his then pharmacy and wholesale distributor for his wife's personal use without a physician's authorization. Between 1988 and 1997, the Missouri Board conducted ten inspections of the pharmacy which revealed numerous repeated violations. Particularly noteworthy is that Mr. Vossman continued to dispense controlled substances on a number of occasions without a physican's authorization.

In 1997, Mr. Vossman was given another chance by the Missouri Board to come into compliance. However, the consulting pharmacist hired to review KK Pharmacy's handling of controlled substances reported in March 1998 that, ''there have been attempts to hide or cover missing information needed * * * to make an accurate assessment of the pharmacy's compliance with the agreement.'' The consulting pharmacist concluded that, ''Mr. Vossman has not taken the initiative to be responsible for the pharmacy, but has expected that I or the technicians would come in and do the job for him,'' and that ''I am not sure that Mr. Vossman has the incentive or the skills needed to comply with the terms of this agreement.''

While there is no evidence under factor three that Mr. Vossman or KK Pharmacy has been convicted of a controlled substance related offense, the Deputy Administrator does find Mr. Vossman's conviction for making a false statement to receive a health care benefit relevant under factor five. A registrant's truthfulness and trustworthiness are appropriately considered in determining the public interest.

The Deputy Administrator concludes that there are serious questions as to whether Mr. Vossman and KK Pharmacy can be trusted to responsibly handle controlled substances. Accordingly, the Deputy Administrator concludes that KK Pharmacy's continued registration would be inconsistent with the public interest and therefore grounds exist to revoke the pharmacy's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(4).

Finally, there is a basis to revoke KK Pharmacy's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(5). Mr. Vossman was advised by letter from the Department of Health and Human Services dated February 27, 1998, that pursuant to 42 U.S.C. 1320a–7(a) he was excluded from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs for a period of five years. The Deputy Administrator finds that while this exclusion was based upon Mr. Vossman's conviction for a non-controlled substance related offense, DEA has previously held that misconduct which does not involve controlled substances may constitute grounds, under 21 U.S.C. 824(a)(5), for the revocation of a DEA Certificate of Registration. See Stanley Dubin, D.D.S., 61 FR 60727 (1996), George D. Osafo, M.D., 58 FR 37508 (1993); Gilbert L. Franklin, D.D.S., 57 FR 3441 (1992).

Therefore, the Deputy Administrator concludes that grounds exist to revoke KK Pharmacy's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1), (4), and (5). No evidence of explanation or mitigating circumstances was offered by KK Pharmacy, Mr. Vossman, or anyone purporting to represent the pharmacy.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BK1488104, previously issued to KK Pharmacy, be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective October 13, 1999.

Dated: August 24, 1999.

Donnie R. Marshall,

Deputy Administration.

[FR Doc. 99–23667 Filed 9–10–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 22,

1999, Novartis Pharmaceutical Corporation, 59 Route 10, East Hanover, New Jersey 07926, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture finished product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 12, 1999.

Dated: August 31, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcemenet Administration.

[FR Doc. 99–23670 Filed 9–10–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2015–99; AG Order No. 2254–99]

RIN 1115—AE 26

Extension of Designation of Somalia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends the Attorney General's designation of Somalia under the Temporary Protected Status (TPS) program until September 17, 2000. Eligible nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered for the initial period TPS, which ended on September 16, 1992, or who registered after that date under the late initial registration provision. Persons who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Somalia is effective September 18, 1999, and will remain in effect until September 17, 2000. The 30-day re-registration period begins September 13, 1999 and will remain in effect until October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have to Extend the Designation of Somalia Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of extension is extended, pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). Through such an extension, TPS is available only to persons who have been continously physically present and have continously resided in the United States from the effective date of the initial designation, in this case, since September 16, 1991.

Who Did the Attorney General Decide To Extend the TPS Designation for Somalia?

On September 16, 1991, the Attorney General initially designated Somalia under the TPS program for a period of 12 months. 56 FR 46804. Since that date, the Departments of State and Justice have annually reviewed conditions within Somalia. Based on this year's review, the Attorney General finds that the armed conflict in Somalia is ongoing, and that the extraordinary and temporary conditions that provided a basis for the initial TPS designation continue to warrant the extension of Somalia's TPS designation. 8 U.S.C. 1254a(b)(1)(C).

If I Currently Have TPS, How Do I Register for an Extension?

Persons previously granted TPS under the Somalia program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins September 13, 1999 and ends October 13, 1999. Additionally, you must file a Form I–765, Application for Employment Authorization. See the chart below to determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765.

If—	Then—
You are applying for employment authorization through September 17, 2000.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765 and a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs ($1\frac{1}{2}'' \times 1\frac{1}{2}''$).

Is Late Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Somalia under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must

(1) be a national of Somalia (or alien having no nationality who last habitually resided in Somalia);

(2) have been continuously physically present in the United States since September 16, 1991;

(3) have continuously resided in the United States since September 16, 1991; and

(4) be admissible as an immigrant, except as otherwise provided in section 244(c) of the Act. 8 CFR 244.2(f)(2).

Additionally, the applicant must be able to demonstrate that, during the initial registration period from

September 16, 1991, through September 16, 1992, he or she

(1) was in valid immigrant or nonimmigrant status, or had been granted voluntary departure status, or any relief from removal;

(2) had an application for change of status, asylum, voluntary departure status or any relief from removal;

(3) was a parolee or had a pending request for reparole; or

(4) was the spouse or child of an alien currently eligible to be a TPS registrant. Id.

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the qualifying condition. Id.

Where Should I File for an Extension of TPS?

Nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) seeking to register for an extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service local office that has jurisdiction over the applicant's place of residence.

When Can I File for an Extension of TPS?

The 30-day re-registration period begins September 13, 1999 and will remain in effect until October 13, 1999.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Somalia (or alien having no nationality who last habitually resided in Somalia) who is otherwise eligible for TPS and has applied for or plans to apply for asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for Asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of an aggravated felony is not eligible for asylum or TPS.

Does This Extension Allow Nationals of Somalia (or Aliens Having No Nationality Who Last Habitually Resided in Somalia) Who Entered the United States After September 16, 1991, To File for TPS?

No. This is a notice of an extension of the TPS designation for Somalia. It is not a notice of redesignation of Somalia under the TPS program. An extension of TPS does not change the required dates of continuous physical presence and residence in the United States, and does not expand the TPS program to include nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who arrived in the United States after the date of the original designation, in this case, September 16, 1991.

Notice of Extension of Designation of Somalia Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3)(A) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Somalia was initially designated for TPS continue to exist. As a result, I determine that, the armed conflict in Somalia is ongoing, and that the extraordinary and temporary conditions that provided a basis for the initial TPS designated for Somalia continue to exist. Accordingly, I order as follows:

(1) The designation of Somalia under section 244(b) of the Act is extended for an additional 12-month period from September 18, 1999, until September 17, 2000. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 350 nationals of Somalia (or alien having no nationality who last habitually resided in Somalia) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from September 18, 1999, through September 17, 2000, a national of Somalia (or aliens having no nationality who last habitually resided in Somalia) who received a grant of TPS during the initial period of designation from September 16, 1991, until September 16, 1992, must re-register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on September 13, 1999 and ending on October 13, 1999.

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before September 17, 2000, the designation of Somalia under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the reasons underlying it, will be published in the **Federal Register.**

(5) Information concerning the TPS program for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) will be available at local Service offices upon publication of this notice.

Dated: September 3, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–23728 Filed 9–10–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Extension of the Unemployment Insurance (UI) Title XII Advances Process

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/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 Employment and Training Administration is soliciting comments concerning the proposed extension of the process for requesting advances from the Federal Unemployment Account (FUA) and repayment of such advances under Title XII of the Social Security Act(SSA). Technically, there is no request for information. There is, however, a paperwork burden on States because they must prepare and transmit formal requests for the authority to request advances and the repayment of said advances.

A copy of the proposed procedure can be obtained by contacting the addressee listed below.

DATES: Written comments must be submitted on or before November 12, 1999.

ADDRESSES: Office of Workforce Security, Employment and Training Administration, Department of Labor, Room C 4514, 200 Constitution Ave, NW., Washington, DC 20210; 202 219–7831 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: James E. Herbert 202–219–5653, jherbert@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Title XII section 1201 of the SSA provides for advances to States from the FUA. The law further sets out specific requirements to be met by a State requesting an advance:

- The Governor must apply for the advance;
- The application must cover a three month period and the Secretary of Labor must be furnished with estimates of the amounts needed in each month of the three month period;
- An application for an advance shall be made on such forms and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law as the Secretary of Labor deems necessary or relevant to the performance of his duties under this title;
- The amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month;
- The term ''compensation'' means cash benefits payable to individuals with respect to their unemployment exclusive of expenses of administration.

Section 1202(a) of the SSA provides that the Governor of any State may at any time request that funds be transferred from the account of such State to the FUA in repayment of part or all of the balance of advances made to such State under section 1201. These applications and repayments may be requested by an individual designated for that authority in writing by the Governor. The DOL proposes to extend this procedure through September, 2002.

II. Review Focus

The DOL is particularly interested in comments which:

- Evaluate whether the proposed extension of the current procedure 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 extension of the current procedure, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the procedure; and
- Minimize the burden of the procedure 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.

III. Current Actions

This action is requested to maintain the continuity of current procedures which have succeeded in the orderly application and repayment operations at both the State and Federal levels. This is not a data collection process.

Agency: Employment and Training Administration, Department of Labor

Title: Governor's requests for advances from the Federal unemployment account or requests for voluntary repayment of such advances.

OMB Number: 1205–0199.

Affected Public: State governments (State Employment Security Agencies).

Total Respondents: 50 States, Washington, DC, the Virgin Islands, and Puerto Rico are covered by this process. The DOL estimates that no State will be requesting advances and making repayments in FY 2000, 2001, and 2002. However, in the event of a recession, that estimate may be revised, and that contingency must be accommodated. In the last recession, six States requested advances.

Frequency: As needed, based on a State's discretion.

Total Responses: 0.

Average Time Per Response: 1 hour.

Estimated Total Burden Hours: None under current forecasts. This estimate may change as a result of economic recession.

Estimated Total Burden Cost: None under current forecasts. This estimate may change as a result of economic recession.

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: September 3, 1999.

Cheryl Atkinson,

Deputy Director, Unemployment Insurance Service.

[FR Doc. 99–23688 Filed 9–10–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training and Partnership Act (JTPA), Title IV—Pilot and Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice, solicitation of grant applications for proposals to conduct regional consortium building activities.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), using funds authorized under the JTPA Section 452 (c) for Pilot and Demonstration programs, is seeking to award regional consortium building grants as stated in the Conference Report (H. Rep. No. 105–825). The purpose of these awards is to support the creation and development of regional skills consortia for the purpose of assessing employer skill needs and of assessing the need for closing the gaps between the skills needed by industry and the skills currently held by regional workers.

All Information Required To Submit a Grant Application is Contained in This Announcement.

It is anticipated that up to $9 million will be available for funding the projects covered by this solicitation. Approximately 15 grants will be awarded, and the estimated range of awards will be $500,000 to $1 million. At the Government's discretion, it is possible that awards would be made above this amount.

DATES: Applications for grant awards will be accepted commencing September 13, 1999. The closing date for receipt of applications is Monday, November 15, 1999, at 4 p.m. (Eastern Time) at the address below. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed to : U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Ms. Mamie D. Williams, Reference: SGA/DFA 99–021, 200 Constitution Avenue, NW, Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Mamie D. Williams, at (202) 219–8739 (this is not a toll free number). All inquiries should include the SGA number (SGA/DFA 99–021) and a contact name, telephone and fax number. This solicitation will also be published on the Internet, on the Employment and Training

Administration's Home Page at http://www.doleta.gov. Award notifications will also be published on this Homepage.

SUPPLEMENTARY INFORMATION: There is clear emphasis in the Workforce Investment Act of 1998 (WIA) on regional planning and cooperation. It is envisioned that the successful applicants will play a significant contributory role toward establishing that capacity. One of the roles of the consortia will be to work in tandem with the emerging structures under WIA to develop a strong cohesive basis for workforce planning and development so that skills shortages in industry are identified and resolved, and training opportunities for workers are clearly available and publicized.

This program places strong emphasis on supporting existing or emerging regional consortia that put a primary focus on technical skills training—whether in a single industry or occupation or in a broader multi-industry or occupational setting that is more geographically based. While significant latitude will be given in terms of the composition of an eligible applicant's porposed regional consortium, inclusion of a local board(s) as authorized under Section 117 of WIA is highly desirable and encouraged.

Part I—Application Process

A. Eligible Applicants

Awards under this Solicitation will be made to organizations and regional consortia of organizations that demonstrate the capacity to develop a comprehensive skill training plan for the area. The intent is to create partnerships that are broadly inclusive of groups in a geographic region or of entities focusing on a single industry or skilled occupation in an area.

There is no requirement that any of the partners in a consortium submitting an application be a private industry council (PIC) established under section 102 of the Job Training Partnership Act (JTPA) or a local workforce investment board that oversees training programs and projects operated in the local workforce investment systems created under the Workforce Investment Act of 1998 (WIA). It is not, however, the intent of this program to fund the establishment of a parallel workforce training system to the one that has already been established under JTPA and WIA. Therefore, applicants are strongly encouraged to consult with the workforce investment entities (PICs or WIBs) in their local area and seek to develop a partnership that works in consonance with those entities. The applicant may (but is not required to) submit a certification from a PIC or WIB attesting to the fact that such consultation is going on and a cooperative working relationship exists (or is being developed).

This Solicitation is extremely open-ended in terms of defining which organizations are eligible to apply for grant awards or to participate in the partnerships. Specifically, organizations eligible to apply may include but are not limited to organizations and regional consortia that comprise businesses, business and trade associations, labor unions, community colleges and other post-secondary institutions, and community-and faith-based organizations. In view of the fact that one of the foci of this initiative is closing regional skills gaps, it would be highly desirable to include businesses as participants which represent industries and occupations in which there are regional skills shortages. PICs or local boards may also apply for these grants both singly and in partnership with other PICs or other organizations. The governing criterion should be that the organization, group, consortium, or partnership is interested in addressing activities relating to regional job skills, gaps/needs and is interested, in the case of a single organization applicant, in creating a regional consortium for that purpose.

As noted above, these regional consortia will probably be multi-jurisdictional and may, in some cases, cross State boundaries, however, no minimum size is established, and the smallest grant could conceivably encompass a single local workforce investment area or service delivery area.

B. Submission of Proposals

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) distinct parts, Parts I and II.

- Part I of the proposal shall contain the Standard Form (SF) 424, ''Application for Federal Assistance''(appendix A) and a ''Budget Information Sheet'' (appendix B). All copies of the (SF) 424 MUST have original signatures of the legal entity applying for grant funding. The individual who signs the application should be the same individual who signs the certification discussed in the previous section. Applicants shall indicate on the (SF) 424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.
- Part II must contain a technical proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work contained in this announcement. A grant application is limited to twenty (20) double-spaced, single-side, 8.5-inch × 11-inch pages with 1-inch margins. Attachments may not exceed fifteen (15) pages. Text type willl be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application must include a Time Line outlining project activities and an Executive Summary not to exceed two pages. The Time Line and the Executive Summary do not count against the 20-page limit. No cost data or reference to price should be included in the technical proposal.

C. Hand—Delivered Proposals

If proposals are hand-delivered, all copies must be received at the designated place by 4 p.m., Eastern Time, Monday, November 15, 1999. All overnight mail will be considered to be hand delivered and must be received at the designated place by 4 on the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before award is made and it:

- Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);
- Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for proposals. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence that an application was sent in accordance with these requirements is a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

E. Funding Availability and Period of Performance

The Department of Labor expects to make approximately 15 awards, with a total investment of approximately $9,000,000. The period of performance will be for 18 months from the date the grant is awarded. Because ETA views these grants as initial start up funding, it is anticipated that these awards will be one-time grants with no provision of an option year. The Department expects that the award amounts will range from $500,000 to $1 million. At the Government's discretion, it is possible that awards would be made above this amount.

F. Definitions

- Region, for the purpose of this solicitation, means an area which exhibits a commonality of economic interest. Thus, a region may comprise a few labor market areas, one large labor market, one labor market area joined together with one or more adjacent rural districts, one or more special purpose districts, or one or more contiguous PICs or local boards. Clearly, if the region involves multiple economic or political jurisdictions, it is essential that they be contiguous to one another. A region may be either intrastate or interstate. Although the rating criteria will provide more detail, it is the applicant's responsibility to demonstrate the regional nature of the area which that application covers. Also, a region may be coterminous with a single PIC or local board.
- Persons who may have fewer educational or occupational credentials means those individuals who have the educational or occupational credential level enumerated in section 101 (33) of WIA (which, in another context, is employed to describe an ''out of school youth''). Specifically, that definition refers to a school dropout or someone who has received a secondary school diploma or its equivalent but is basic skills deficient, (as defined in WIA, sec 101 (4)), unemployed or underemployed.

Part II—Statement of Work/Reporting Requirements

Background

The Conference Agreement for the Fiscal Year 1999 appropriation for Title IV of JTPA states that it includes $9 million for the competitions for ''creation of regional consortia for the purpose of assessing employer skill needs...H. Rep No. 105–825, 105th Cong., 2nd Sess. (Oct. 19, 1998).'' This set-aside is also intended to assess the need for closing the gaps between business and the skills held by regional workers.

Traditionally, overall tight labor markets and even skill shortages are good for workers in that they can lead to rising wages, improved working conditions, and new opportunities for workers and new labor market entrants. What is a skill shortage? In the simplest terms possible, a shortage occurs in a market economy when the demand for workers in a particular occupation at an ascertainable skill level is greater than the supply of workers who are qualified, available, and willing to do the job. Problematic regional or sectoral industry skills shortages—those that occur when there is imbalance between worker supply and demand for a persistent period of time—can mean that particular goods and services are not provided and that the economy is operating less efficiently than it could. At the microeconomic level, i.e., for individual employers, the inability to find an adequate supply of workers '' even after offering higher wages and better working conditions—can cause a loss of business and profits.

One theme in WIA refers to regional planning, cooperation, and cohesion. This regional consortium building initiative—with its heavy emphasis on partnership-creation—is an opportunity to learn how to build better quality, longer-term partnerships. Thus, one underlying purpose of this effort is to develop, test, and evaluate ''models'' for use by States and local boards.

Project Summary

A. Purpose

ETA intends to allocate up to $9 million for grants to existing or emerging regional consortia, or organizations seeking to form a consortia, for the primary purpose of forming a cohesive regional planning structure which has the capacity to assess employer skill needs, determine the gap between those industry needs and the skills possessed by regional workers, and develop a concrete action plan to train regional workers to fill the identified skill gaps.

The first priority in making these awards will be to support the process of consortium building. Thus, a successful applicant may be a single group which has developed a well-conceived and structured proposal that creates the necessary linkages with key organizations within a defined region to form the basis of a strong consortium.

The evidence of these linkages will be a signed consortium agreement that articulates the linkages being developed and describes in some detail what the roles of the various partners will be. Because a major purpose of the consortia will be to address industry skill needs, applicants are encouraged to enter into partnership arrangements with entities which possess a sound grasp of the job marketplace in the region. Typically, such organizations would include businesses (including small-and medium-size businesses) and business, trade or industry associations such as local Chambers of Commerce.

A significant aspect of the consortium-building effort is the resources that entities can bring to the table and contribute to the partnership. The Employment and Training Administration (ETA) does not require a match for this competition. However, a major aspect of this undertaking is to create regional consortia to address skill shortages that can sustain themselves once the consortium building grant has expired, and a substantial determining factor of that sustainability will be the amount of resources—both cash and in kind—that can be generated and leveraged by the participants in the consortium. Sustainability is an important consideration for the full implementation of the action plan that will be developed as part of this project but will be acted upon beyond the scope of this grant.

A second major purpose of the consortia is to assess the skills possessed by regional workers and develop strategies for making sure those skills are aligned with the requirements for filling the job vacancies that exist in regional industries. With this in mind, it is very important that consortia include a broad spectrum of organizations that have an understanding of regional skills needs and can provide the skills training to meet those needs. Specifically, the applicants are encouraged to reach out and involve groups such as labor unions, community colleges and other accredited post secondary educational institutions, and community-based organizations.

The result of the regional skills assessments described above should be an action plan which formulates an approach for resolving particular skills gaps that exist in the region. The action plan should carefully enumerate what the major skills shortage occupations are in the particular area and present a detailed series of steps designed to close those gaps. The action plan should be viewed as a key product of these grants.

Although the design and testing of curriculum is not the central concern of this start up consortium building initiative, it is entirely appropriate and desirable that regional consortia that

have established the necessary partnership structure and have developed a partnership agreement that defines respective organizational roles within the structure begin work on curriculum development for skills shortage training while formulating their action plan. Having a membership that includes educational organizations such as community colleges and other accredited post secondary education and training institutions will assist the consortia in formulating and testing such skills training curriculum approaches.

Many of the job vacancies that emerge in the region may require substantial technical skills. Therefore, it is anticipated that significant technical skill training may be necessary to fill those employment opportunities. Such technical skill training may combine academic instruction with work place learning and instruction and training customized to the needs of specific firms. To the extent that applicants target for service persons with barriers to employment as described by section 203 (b) and (c) of JTPA (in particular, young adults aged 18–24) who may have fewer educational or occupational credentials, it is important that they spell out career paths which will help those individuals acquire high proficiency levels that may be required for some of the vacancies.

B. Reporting Requirements

Once grant awards are made, the following reports and documents will be required:

- Quarterly Financial Reports. The awardee must submit to the Grant Officer's Technical Representative (GOTR) within the 30 days following each quarter, two copies of a quarterly Financial Status Report, Standard Form (SF) 269, until such time as all funds have been expended or the period of availability has expired.
- Progress Reports. The awardee must submit quarterly reports to the GOTR within the 30 days following each quarter. Two copies are to be submitted; the report will provide a detailed account of activities undertaken during the quarter.
- The awardee shall work with the GOTR in submitting a copy of the signed consortium agreement. The agreement shall include a written statement of operating principles and procedures defining roles and decision-making processes for the consortium.
- The awardee shall work with the GOTR in submitting a copy of the signed consortium action plan.
- Final Report. A draft final report which summarizes project activities and results of the demonstration shall be submitted no later than 30 days prior to the expiration date of the grant.

Part III—Review Process and Rating Criteria

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. The Grant Officer will make final award decisions based upon what is in the best interest of the Government.

Rating Criteria

A. Statement of Need (20 Points)

The applicant must provide a clear statement describing the geographic region that the planned consortium, or organizations seeking to form a consortia, will encompass.

What are the economic, demographic and governmental considerations that make this a region that should be considered for funding under this SGA? In order to be acceptable, the description should discuss these factors with precision, utilizing appropriate socioeconomic and statistical data. Applicants are encouraged to utilize all available data resources—e.g., expressed hiring needs of employers in the region and The America's Labor Market Information System—in responding to this criterion.

Other pertinent questions that will provide greater depth of description of the region's characteristics and needs include: What is the general business environment? What industries and occupations are growing, and which ones are contracting? What are the characteristics of the major employers in the region?

B. Planning Strategy, Including Strength of Linkages/Partnerships and Sustainability (35 Points)

The applicant should enumerate who the partners (or potential partners) are in this endeavor and how it is envisioned they will link together. The focus of this criterion is on the structural aspects of the consortium. What kinds of inter-organizational linkages have been (are going to be) created? What resource(s) is each partner willing to commit to the consortium? It is vitally important that all the partners be enumerated and thoroughly discussed to provide a clear picture of the potential the consortium will have for contributing to improved strategic planning within the region and within the workforce investment system and for substantively addressing skill shortage issues both on a regional basis and, to the extent that the region in question impacts upon broader national shortage issues, on a national basis. As noted earlier, applicants are not required to include a PIC or a WIB as a partner, however, they are encouraged to do so.

This procurement does not require that applicants provide a match. ETA feels strongly, however, that applicants and their partners should leverage additional resources—both Federal and non-Federal—to establish an entity which will be strong and have ''staying power.'' It is hoped that the consortium will have leveraged sufficient resources to provide a viable base for continuing its activities once the funds from this grant award are exhausted.

C. Prospective Target Population (20 Points)

The primary goals of this initiative are to build regional consortia and to develop viable action plans for bridging the gap between the skills needed by industry and those possessed by the regional workforce. Thus, there may be little, if any, actual provision of training services to individuals for the duration of this initial start up grant. Nevertheless, in describing the regional workforce, the applicant should develop a clear sense of who comprises the target population.

The description of the characteristics of those individuals the plan envisions serving should be clear and sufficiently detailed to determine the potential participants' needs for workforce development services. Documentation should be provided showing that a significant number of workers with defined skill needs are available for participation within the project's defined regional area.

Applicants are strongly encouraged to include underrepresented communities and populations in their proposal particularly those that may reside in any Empowerment Zones and Enterprise Communities (EZ/ECs) in the region. In particular, applicants are encouraged to plan for providing services to individuals with serious barriers to employment such as those described by section 203 (b) and (c) of JTPA (in particular, young adults aged 18–24) who may have fewer educational or occupational credentials.

D. Prior Experience (15 Points)

Applicants should provide a detailed discussion of their specific experience in the activities contemplated by the Solicitation. What kinds of exposure has the applicant had to labor market analysis and/or economic planning including the use of economic and demographic data to identify skill shortage occupations? The application should also enumerate experience in developing strategies for addressing such shortages. Also, applicant should detail any background that it has in coalition or organization building work.

The applicant should include resumes of key staff who are proposed for this section. It may well be that individual staff members do not have much experience in consortium-building activities for workforce training. Therefore, it will be acceptable to show that the key staff has substantial background in economic planning for workforce and employment needs and related activities contemplated as part of the consortium building for this effort.

Also, a management plan should be included in the proposal which describes how a grant of this sort would be administered together with specific management experience possessed by grantee staff.

E. Cost Effectiveness (10 Points)

Applicants must provide a detailed discussion of the expected cost effectiveness of their proposal. This discussion should be couched in terms of the reasonableness of the cost in relation to the activities planned.—e.g., the consortium building activities. What expenses will be incurred in terms of bringing the concerned parties together in collaborative, cooperative partnership arrangements? How do these expenses compare to the capacity generated by the resulting consortium? What are the benefits of assessing community needs and factoring in workers' needs and attempting to calibrate those two in a comprehensive plan?

This section should also provide some discussion of what leveraged resources will be committed to the project, specifying the nature of those resources—e.g., Federal, non Federal, cash or in kind, capital equipment.

Signed this date, September 8, 1999 at Washington, DC.

Laura A. Cesario,

Grant Officer.

Appendices

Appendix A: (SF) 424—Application For Federal Assistance
Appendix B: Budget Information Form

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX A

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

1 7 - 2 4 9

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		**e. Date Signed**

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	*(B)*	*(C)*
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	*(B)*	*(C)*
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: ***Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).***

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits****: Indicate the rate and amount of fringe benefits.*

3. ***Travel****: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment****: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies****: Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual****: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other****: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs****: Add lines 1 through 7.*

9. ***Indirect Costs****: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested****: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 99–23689 Filed 9–10–99; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act: Indian and Native American Employment and Training Programs; Solicitation for Grant Applications: Final Grantee Designation Procedures for Program Years 2000 and 2001

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of final designation procedures for grantees.

SUMMARY: This document contains the procedures by which the Department of Labor (DOL) will select and designate service providers for Program Years 2000 and 2001 for Indian and Native American Employment and Training Programs under the Workforce Investment Act. Grantees or potential eligible providers participating in Public Law 102–477 Demonstration Projects must apply for designation if they wish to receive WIA funds. This law allows Federally-recognized tribes to consolidate their formula-funded employment and training and related dollars under a single service plan administered by the Bureau of Indian Affairs. This notice provides the information that applicants need to submit appropriate requests for designation.

DATES: Notices of Intent must be received in the Department by October 1, 1999, or no later than 30 days from date of publication of this solicitation in the **Federal Register**, whichever is later. If not received by that **Federal Register** publication date, Notices of Intent must be postmarked by the U.S. Postal Service no later than that publication date. Failure to meet this requirement will disqualify the applicant from further consideration.

ADDRESSES: Send a signed original and two copies of the Notice of Intent to Mr. James C. DeLuca, Chief, Division of Indian and Native American Programs, Room N–4641 FPB ATTN: MIS Desk, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Workforce Investment Act: Indian and Native American Programs; Final Designation Procedures for Program Years 2000 and 2001

Table of Contents

Introduction: Scope and Purpose of Notice
I. General Designation Principles
II. Notice of Intent
III. Use of Panel Review Procedure
IV. Notification of Designation/Nondesignation
V. Special Designation Situations
VI. Designation Process Glossary

Introduction: Scope and Purpose of Notice

Section 166 of the Workforce Investment Act (WIA) authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in the Act, and in the WIA section 166 regulations at 20 CFR part 668, published at 64 FR 18622, 18736 (April 15, 1999). The specific eligibility and application requirements for designation are set forth at 20 CFR part 668, subpart B. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under WIA, section 166 for a two-year designation period. Designated Native American section 166 service providers will be funded annually during the designation period, contingent upon all other grant award requirements being met and the continuing availability of Federal funds.

The Notice of Intent (see Part II, below) is mandatory for all applicants. Any organization interested in being designated as a Native American section 166 grantee should be aware of and comply with the procedures in these parts.

The amount of WIA section 166 funds to be awarded to designated Native American organizations is determined under procedures described at 20 CFR 668.296(b) and not through this designation process.

I. General Designation Principles

Based on WIA and applicable regulations, the following general principles are intrinsic to the designation process:

(1) *All applicants* for designation shall comply with the requirements found at 20 CFR part 668, subpart B, which contains the basic eligibility, application, and designation requirements. Potential applicants should be aware that a non-incumbent entity must have a population within the designated geographic service area which would provide formula funding under 20 CFR 668.296(b) in the amount of at least $100,000 per program year. Federally-recognized tribes wishing to participate in the demonstration under Public Law 102–477 must have a service area and population which generates at least $20,000 per year in section 166 formula funds.

(2) High unemployment, lack of training, lack of employment opportunity, societal and other barriers exist within predominantly INA communities and among INA groups residing in other communities. The nature of this program is such that Indians and Native Americans are best served by a responsible Indian and Native American organization directly representing them, with the demonstrated knowledge and ability to coordinate resources within the respective communities. The WIA and the governing regulations establish a priority for Indian and Native American organizations. That priority is the basis for the steps which will be followed in designating grantees.

(3) *A Federally-recognized tribe, band or group on its reservation, and Alaska Native entities defined in the Alaska Native Claims Settlement Act (ANCSA)* or consortia that include a tribe or an entity are given highest priority over any other organization if they have the capability to administer the program and meet all eligibility and regulatory requirements. This priority applies only to the areas over which the organizations have legal jurisdiction.

In the event that such a tribe, band or group (including an Alaska Native entity) is not designated to serve its reservation or geographic service area, the DOL will consult with the governing body of such entities when designating alternative service deliverers. Such consultation may be accomplished in writing, in person, or by telephone, as time and circumstances permit. When it is necessary to select alternative service deliverers, the Grant Officer will, in accordance with 20 CFR 668.280, whenever possible, accommodate the views and recommendations of the INA community leaders and the Division of Indian and Native American Programs (DINAP).

(4) In designating Native American section 166 grantees for areas not covered by the highest priority in accordance with (3) above, DOL will designate Indian and Native American-controlled organizations as service providers. This would include the group referred to in (3) applying for off-reservation areas. As noted in (3) above, when vacancies occur, the Grant Officer will select alternates in accordance with 20 CFR 668.280.

(5) Incumbent and non-incumbent applicants seeking additional areas are expected to clearly demonstrate a working knowledge of the community that they plan to serve, including available resources, resource utilization and acceptance by the service population.

(6) Special employment and training services for Indian and Native American

people have been provided through an established service delivery network for the past 24 years under the authority of JTPA section 401 and its predecessor, section 302 of the repealed Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority to both preserve the continuity of such services and to prevent the undue fragmentation of existing geographic service areas. Consistent with the present regulations and other provisions of this notice, this will include priority for those Native American organizations with an existing demonstrated capability to deliver employment and training services within an established geographic service area, and for organizations which directly represent the recipients of WIA services. Such preference will be determined through input and recommendations from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of National Programs (ONP),

(7) In preparing applications for designation, applicants should bear in mind that the purpose of section 166 of WIA is ''to support employment and training activities for Indian, Alaska Native, and Native Hawaiian individuals in order—

(A) To develop more fully the academic, occupational, and literacy skills of such individuals;

(B) To make such individuals more competitive in the workforce; and

(C) To promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities in accordance with the goals and values of such communities.''

II. Notice of Intent

1. Dates and Address for Submittal

Send a signed original and two copies of the completed Notice of Intent (NOI) to Mr. James C. DeLuca, Chief, Division of Indian and Native American Programs, Room N–4641 FPB, ATTN: MIS Desk, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

Notices of Intent which comply with the requirements of this solicitation must be received by or postmarked by October 1, 1999, or 30 days from date of publication of this solicitation in the **Federal Register**, whichever is later. NOIs not received by the publication deadline will be accepted only with an official, U.S. Postal Service postmark indicating timely submission. Dates indicating submission by private express delivery service or by metered mail are unacceptable as proof of submission.

When more than one eligible organization applies to provide services in the same area, a review of the applicants will be conducted and when necessary, a competitive selection will be made. Competing applicants will be notified of such competition no later than November 15, 1999, and may submit revised Notices of Intent to be received by the department or postmarked no later than January 5, 2000. At a minimum, revised Notices of Intent should include the information required in Part A as applicable and Part B. All Notices of Intent must be submitted to the Chief of DINAP at the above address.

2. Notice of Intent Content and Procedure

The information required in *Part A* must be provided by *all applicants.* Additionally, *competing organizations* will be required, if notified by the Grant Officer, to provide the information in *Part B.*

Part A

1. A completed SF–424, ''Application for Federal Assistance'', signed by the authorized signatory official;

2. An identification of the applicant's legal status, including articles of incorporation or consortium agreement as appropriate;

3. A specific description of the territory being applied for, by State(s), counties, reservation(s) or similar area, or service population;

4. A very brief summary, including the funding source, contact person and phone number of the employment and training or human resource development programs serving Native Americans that the entity currently operates or has operated within the previous two-year period;

5. A brief description of the planning process used by the entity, including involvement of the governing body and local employers.

6. Evidence to establish an entity's ability to administer funds under 20 CFR 668.220 and 668.230 which should at a minimum include:

(a) A statement that fraud or criminal activity has not been found in the organization, OR a brief description of the circumstance where it has been found and a description of resolution, corrective action and current status, AND

(b) A narrative demonstrating that an entity has or can acquire the necessary program and management personnel to safeguard federal funds and effectively deliver program services that support the purposes of the Workforce Investment Act, AND

(c) If not otherwise provided, a narrative demonstrating that an entity has successfully carried out or has the ability to successfully carry out activities that will strengthen the ability of the individuals served to obtain or retain unsubsidized employment, including the past two-year history of publically funded grants/contracts administered including identification of the fund source and a contact person.

The Grant Officer may require additional, clarifying, or other information including a site visit, prior to designating applicants.

Part B

If the Grant Officer determines that there is competition for all or part of a given service area, the following information will be required of competing entities:

(1) Evidence that the entity represents the community proposed for services such as: Demonstration of support from Native American-controlled organizations, State agencies, or individuals in a position to speak to the employment and training competence of the entity in the specific area applied for; and

(2) Submission of a service plan and other information expanding on the information required at Part A which the applicant feels can strengthen its case, including information on any unresolved or outstanding administrative problems.

Exclusive of charts or graphs and letters of support, the additional information submitted to augment the Notice of Intent in a situation involving competition should not exceed *75* pages of double-space unreduced type.

Incumbent and non-incumbent Federally-recognized tribes and Alaska entities need not submit evidence of support regarding their own reservations or areas of legal jurisdiction. However, such entities are required to provide such evidence for any area which they wish to serve beyond their reservation boundaries, or their Congressionally-mandated or Federally-established service areas.

All applicants for non-contiguous geographic service areas must prepare a separate, complete Notice of Intent (including the above-referenced supplementary information if applicable) for each such area.

III. Use of Panel Review Procedure

An initial review of all applicants, conducted by DINAP and with the concurrence of the Grant Officer, will identify priority applicants and

recommend those areas requiring further competition. A formal panel review process may be utilized under the following circumstances:

(1) When one or more new applicants, none qualifying for the highest priority for the requested area, can demonstrate the potential for superiority over the incumbent organization, OR

(2) When two or more applicants, none qualifying for the highest priority, request an area and the incumbent organization fails to apply for designation.

When further competition occurs, the Grant Officer will convene a review panel to score the information submitted with the Notice of Intent (Part A *and* B). This panel will include individuals with knowledge of or expertise in programs dealing with Indians and Native Americans. The purpose of the panel is to review and evaluate an organization's potential, *based on its application (including the required supplemental information*), to provide services to a specific Native American community, to rate the proposals in accordance with the rating criteria and to make recommendations to the Grant Officer. The panel will be provided the information described in the Notice of Intent and supplemental information provided through the Grant Officer.

It is DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand-delivered deadlines. All information provided before these deadlines must be in writing.

This policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

During the review, the panel will not give weight to undocumented assertions. Any information must be supported by adequate and verifiable documentation, *e.g.*, supporting references must contain the name of the contact person, an address, and telephone number. Panel recommendations are advisory to the Grant Officer.

The factors listed below will be considered in evaluating the applicants approach to providing services.

	Points
1. (a) Previous experience in successfully operating an employment and training program serving Indians and Native Americans, OR (b) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services.	20
2. Approach to providing services including: Identification of the training and employment problems and needs in the requested area and approach to addressing such needs and demonstration of the ability to maintain continuity of services to Indian or Native American participants consistent with those previously provided in the community	40
3. Description of Planning Process including involvement of community leaders, involvement with local Workforce Investment Boards and Youth Councils, etc	15
4. Coordination, linkages and the ability to utilize existing resources within the community, including one-stop systems (as applicable), to eliminate duplication of effort	15
5. Demonstration of support and recognition of the Native American community and service population	10
Total	100

IV. Notification of Designation/ Nondesignation

The Grant Officer will make the final designation decision giving consideration to the following factors: the review panel's recommendation, in those instances where a panel is convened; input from DINAP, the Office of National Programs, other offices within the Employment and Training Administration, and the DOL Office of the Inspector General; and any other available information regarding the organization's financial and operational capability, and responsibility. The Grant Officer will select the entity that demonstrates the ability to produce the best outcomes for its customers. Decisions will be made by March 1, 2000, and will be provided to applicants as follows:

(1) *Designation Letter.* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the geographic service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographical service area requested in the Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or if acceptable to the designee, more than the area requested.

(2) *Conditional Designation Letter.* Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished. Failure to satisfy such conditions may result in a withdrawal of designation.

(3) *Non-Designation Letter.* Any organization not designated, in whole or in part, for a geographic service area requested will be notified formally of the Non-Designation and given the basic reasons for the determination. An applicant for designation which is refused such designation, in whole or in part, will be afforded the opportunity to appeal its Non-Designation as provided at 20 CFR 668.270.

V. Special Designation Situations

(1) *Alaska Native Entities*

DOL has established geographic service areas for Alaska Native employment and training grantees based on the following: (a) The boundaries of the regions defined in the Alaska Native Claims Settlement Act (ANCSA); (b) the boundaries of major sub-regional areas where the primary provider of human resource development related services is an Indian Reorganization Act (IRA)-recognized tribal council; and (c) the boundaries of the one Federal reservation in the State. Within these established geographic service areas, DOL will designate the primary Alaska Native-controlled human resource development services provider or an entity formally selected by such provider. In the past, these entities have been regional nonprofit corporations, IRA-recognized tribal councils, and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program Years 2000 and 2001.

(2) *Oklahoma Indians*

DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indian tribes and organizations to serve portions of the State. Generally, service areas have been designated geographically as countywide areas. In cases in which a significant portion of

the land area of an individual county lies within the traditional jurisdiction(s) of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information contained in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas will be honored by DOL. Where mutually satisfactory arrangements cannot be made, DOL will designate and assign service area to Native American grantees in a manner which is consistent with WIA and that will preserve the continuity of services and prevent unnecessary fragmentation of the programs.

VI. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) *Indian or Native American-Controlled Organization*

This is defined as any organization with a governing board, more than 50 percent of whose members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaska or Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of designation determinations, the governing board must have decision-making authority for the WIA section 166 program. It should be noted that, pursuant to WIA section 166(d)(2)(B), individuals who were eligible to participate under section 401 of JTPA on August 6, 1998, shall be eligible to participate under WIA. Organizations serving such individuals shall be considered ''Indian controlled'' for WIA section 166 purposes.

(2) *Service Area*

This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is identified by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) *Incumbent Organizations*

Organizations which are current grantees under JTPA section 401, during PY 1999, are considered incumbent grantees for the existing service area, for the purposes of WIA.

Signed at Washington, DC, this third day of September, 1999.

Anna W. Goddard,

Director, Office of National Programs.

James C. Deluca,

Chief, Division of Indian and Native American Programs.

E. Fred Tello,

Grant Officer, Division of Federal Assistance.

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School District.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required face sheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry: :

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

   -- "New" means a new assistance award.

   -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

   -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans, and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

[FR Doc. 99–23687 Filed 9–10–99; 8:45 am]
BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors; Notice

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on September 18, 1999. The meeting will begin at 10:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: The W Seattle Hotel, 1112 Fourth Avenue, Seattle Washington 98101.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of June 12, 1999.
3. Approval of minutes of the executive session of the Board's meeting of June 12, 1999.
4. Public Speakers.
5. Chairman's Report.
6. Members' Report.
7. President's Report
8. Inspector General's Report.
9. Consider and act on the report of the Board's Finance Committee.
10. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
11. Establish the Board's 1999 Annual Performance Reviews Committee to conduct the 1999 annual performance appraisals of the Corporation's President and its Inspector General.
12. Report on the status of the special panel established to study and report to the board on issues relating to LSC grantees' representation of legal alien workers and the requirement that they be ''present in the United States .''
13. Report by the President and Inspector General on the status of and progress made with the Corporation's case service reporting system.

Closed Session

14. Briefing by the Inspector General on the activities of the OIG.
15. Briefing [1] by the President on internal personnel and operational matters.
16. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

17. Consider and act on the proposed establishment of the office of Vice President for Government Relations and Public Affairs, and the appointment of Maurico Vivero to that office.
18. Consider and act on the proposed establishment of the office of Vice President for Legal Affairs, and the appointment of Victor M. Fortuno to that office.
19. Consider and act on other business.
20. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: September 7, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–23892 Filed 9–9–99; 1:07 pm]
BILLING CODE 7050–01–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Correction of Notice of Intent To Prepare an Environmental Impact Statement for The El Paso-Las Cruces Regional Sustainable Water Project Sierra and Doña Ana Counties, New Mexico and El Paso County, Texas

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Correcting text.

SUMMARY: This document corrects text appearing in the subject Notice of Intent that was published in the **Federal Register** (63 FR 47042–47043) on Thursday, September 3, 1998. The purpose of this correction is to add the United States Bureau of Land Management as a cooperating agency to the project.

EFFECTIVE DATE: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902 or call 915/832–4741. E-mail: dougechlin@ibwc.state.gov.

SUPPLEMENTARY INFORMATION: On page 47043 of the Thursday, September 3, 1998 **Federal Register**, the incorrect text under section 3. Scoping Process is in the second column, ''The United States Bureau of Reclamation and United States Fish and Wildlife Service have indicated that they will participate as cooperating agencies pursuant to 40 CFR 1501.6, to the extent possible.'' The correct text should read, ''The United States Bureau of Reclamation, United States Fish and Wildlife Service, and United States Bureau of Land Management have indicated that they will participate as cooperating agencies pursuant to 40 CFR 1501.6, to the extent possible.''

Dated: August 10, 1999.

William A. Wilcox, Jr.,

Legal Advisor.

[FR Doc. 99–23678 Filed 9–10–99; 8:45 am]
BILLING CODE 4710–03–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

September 8, 1999.

TIME AND DATE: 11:00 a.m., Tuesday, September 7, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor on behalf of Bernardyn* v. *Reading Anthracite Co.*, Docket Nos. PENN 99–158–D and PENN 99–129–D (Issues include request to vacate or stay judge's order dissolving

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b) (a)(2) and (b). *See* also 45 CFR § 1622.2 & 1622.3

previously issued temporary reinstatement order).

No earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–23961 Filed 9–9–99; 3:49 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co., (San Onofre Nuclear Generating Station, Units 2 and 3); Exemption

I

Southern California Edison Company (SCE, or the licensee) is the holder of Facility Operating License Nos. NPF–10 and NPF–15, which authorize operation of the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized-water reactors located at the licensee's site in San Diego County, California.

II

Regulatory requirements for the hydrogen control system are specified in 10 CFR 50.44 and 10 CFR Part 50, Appendix A, (General Design Criteria 41, 42, and 43). Different requirements apply to facilities according to the date of publication of the Notice of Hearing for the Construction Permit. With regard to hydrogen recombiner and purge-repressurization system requirements, SONGS Units 2 and 3 are subject to the requirements of 10 CFR 50.44(e) which states:

> For facilities whose notice of hearing on the application for a construction permit was published on or after November 5, 1970, purging and/or repressurization shall not be the primary means for controlling combustible gases following a LOCA [loss-of-coolant accident]. However, the capability for controlled purging shall be provided. For these facilities, the primary means for controlling combustible gases following a LOCA shall consist of a combustible gas control system, such as recombiners, that does not result in a significant release from containment.

SONGS Units 2 and 3 are also subject to 10 CFR 50.44(d) which states:

> For facilities that are in compliance with [section] 50.46(b), the amount of hydrogen contributed by core metal-water reaction (percentage of fuel cladding that reacts with water), as a result of degradation, but not total failure, of emergency core cooling functioning shall be assumed either to be five times the total amount of hydrogen calculated in demonstrating compliance with [section] 50.46(b)(3), or to be the amount that would result from reaction of all the metal in the outside surfaces of the cladding cylinders surrounding the fuel (excluding the cladding surrounding the plenum volume) to a depth of 0.00023 inch (0.0058 mm), whichever amount is greater.

III

The licensee proposed to remove hydrogen control requirements from the SONGS Units 2 and 3 design basis. The licensee stated that the hydrogen control requirements in the SONGS design basis are not required to provide assurance that the containment would not fail due to combustible gas accumulation and ignition during accidents where fission products would be present in the containment atmosphere. The licensee also proposed to modify emergency operating instructions to remove operator action requirements for monitoring and controlling hydrogen concentration in containment.

The licensee's proposed removal of the hydrogen control requirements from the SONGS Units 2 and 3 design basis requires an exemption from certain requirements of 10 CFR 50.44(d) and (e). By its letter dated September 10, 1998, as supplemented July 19, 1999, the licensee submitted its exemption request.

IV

Section 50.12(a) of Title 10 of the Code of Federal Regulations part 50 states that the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) the Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR part 50 states that special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

V

The staff has evaluated the licensee's analysis and documented its evaluation in the enclosed safety evaluation. The staff's evaluation is summarized below.

The underlying purpose of 10 CFR 50.44 is to ensure that following a LOCA, an uncontrolled hydrogen-oxygen recombination would not take place, or that the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function. The licensee demonstrated that the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function without credit for the hydrogen recombiners or the hydrogen purge system for both the design-basis and the more limiting severe accident with up to 75 percent metal-water reaction that remains in-vessel scenario. Several risk studies, such as NUREG–1150, ''Severe Accident Risk: An Assessment for Five U.S. Nuclear Plants,'' and those performed by the licensee have shown that the relative importance of hydrogen combustion for large, dry containments with respect to containment failure to be quite low. The licensee also demonstrated that hydrogen recombiners are insignificant from a large, dry containment integrity perspective and the radiological consequences remain unchanged with or without recombiners. Therefore, the requirements for hydrogen recombiners and the backup hydrogen purge capability for large, dry containments, such as SONGS Units 2 and 3, are not necessary. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii).

VI

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and is otherwise in the public interest.

Therefore, the Commission hereby grants Southern California Edison Company an exemption from the requirements of 10 CFR 50.44(d) and (e) to remove hydrogen control requirements from the SONGS Units 2 and 3 design basis. The exemption also allows the licensee to modify its emergency operating instructions to remove operator action requirements for controlling hydrogen concentration in containment.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (64 FR 48211).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of September 1999.

For The Nuclear Regulatory Commission.

Suzanne C. Black,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23693 Filed 9–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Vermont Yankee Nuclear Power Corporation (the licensee) to withdraw its April 20, 1999, application for proposed amendment to Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station, located in Windham County Vermont.

The proposed amendment would have revised the reactor core spiral reloading pattern such that it begins around a source range monitor.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 19, 1999 (64 FR 27328). However, by letter dated August 18, 1999, the licensee superseded, in its entirety, the April 20, 1999, request, thereby withdrawing the proposed change.

For further details with respect to this action, see the application for amendment dated April 20, 1999, and the licensee's letter dated August 18, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, MD., this 27th day of August 1999.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23692 Filed 9–10–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. C99–4]

Technical and Settlement Conference; Meeting

AGENCY: Postal Rate Commission.

ACTION: Notice of technical and settlement conference.

SUMMARY: An initial technical and settlement conference has been scheduled in docket no. C99–4. The conference will address a cost study, physical operation of Bulk Parcel Return Service (BPRS), potential settlement proposals, and other issues in the docket. The conference will assist in clarifying issues and allowing the settlement coordinator to respond to the Commission's request that a report on the potential for settlement be filed by September 17, 1999.

DATES: The technical and settlement conference has been scheduled for Tuesday, September 14, 1999. For time and other dates, see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The conference will be held in the Commission's hearing room at 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Ted P. Gerarden, OCA director, at 202–789–6838.

SUPPLEMENTARY INFORMATION: The Commission's OCA hereby gives notice of a technical and settlement conference to discuss resolution of the complaint filed on June 9, 1999, by the Continuity Shippers Association (CSA). On September 3, 1999, the Commission issued a notice of formal proceedings to consider the complaint and provided until September 17, 1999, for the parties to explore settlement.[1]

The CSA complaint alleges that the rate for BPRS is excessive. The complaint raises issues concerning the BPRS cost study performed by the Postal Service in October 1998, in compliance with the Commission's recommended decision in docket no. MC97–4. The complaint also alleges similarities between BPRS and Special Standard (B) mail. The Commission noted the Postal Service's responses to CSA's allegations, but determined that there was inadequate justification for dismissal of the complaint.

Under the circumstances presented, it is imperative that the parties utilize ''appropriate informal inquiry methods to define the issues, further the exchange of information and explanations between the Postal Service and the complainant, and facilitate settlement.'' 39 CFR 3001.85(a). Because the October 1998 study and the physical operation of BPRS in comparison to other mail services are central to addressing the rate for BPRS, an informal technical conference is needed as well as an informal settlement conference. Complainant CSA, the Postal Service, and other interested parties are hereby placed on notice that they are expected to have individuals present at the conference who are thoroughly familiar with the BPRS cost study and with the operational characteristics of BPRS. CSA and the Postal Service are encouraged to discuss the issues raised by the complaint and to share information or proposals in advance of the informal technical and settlement conference.

The informal technical and settlement conference will be held September 14, 1999, beginning at 9:30 a.m. in the Commission's hearing room at 1333 H Street NW., Washington, DC. All interested persons are welcome to attend the conference, but all such persons are placed on notice that attendance at the conference will not confer party status. Any interested person must file pursuant to rule 20 or 20a of the Commission's rules (39 CFR §§ 20 or 20a) in order to intervene or to obtain limited participation status in this proceeding.

The Secretary of the Commission is requested to arrange for publication of this notice in the **Federal Register**.

Authority: 39 U.S.C. 3662.

Dated: September 8, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–23851 Filed 9–10–99; 8:45 am]

BILLING CODE 7710–FW–P

[1] Order No. 1260, Order Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceeding. Ordering paragraph 4 designated OCA to represent the interests of the general public and to act as settlement coordinator pursuant to rule 85 of the Commission's rules of practice and procedure [39 CFR § 3001.85].

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23995; 812–11656]

LSA Variable Series Trust and LSA Asset Management LLC, Notice of Application

September 7, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company

Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order to permit applicants to enter into and materially amend subadvisory agreements without shareholder approval and to grant relief from certain disclosure requirements.

APPLICANTS: LSA Variable Series Trust (the ''Trust''), on behalf of its series, Focused Equity Fund, Growth Equity Fund, Disciplined Equity Fund, Value Equity Fund Balanced Fund, and Emerging Growth Domestic Equity Fund (collectively, the ''Funds''), and LSA Asset Management LLC (the ''Manager'') (collectively, ''Applicants'').

FILING DATE: The application was filed on June 16, 1999 and amended on August 27, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 1, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 3100 Sanders Road, Suite J5B, Northbrook, Illinois 60062.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. The Trust is a Delaware business trust and is registered under the Act as an open-end management investment company. Each Fund has its own investment objective, policies and restrictions.[1] Shares of the Funds will serve as the funding vehicles for variable annuity contracts and variable life insurance policies offered through separate accounts (''Separate Accounts'') of Allstate Life Insurance Company (''Allstate'') and other life insurance companies (owners of such contracts and policies, ''Owners''). The Funds are not sold directly to the public, although in the future shares of the Funds may also be sold to qualified pension plans. The Manager is a wholly-owned subsidiary of Allstate and is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act'').

2. The Manager will serve as investment adviser to the Funds pursuant to an investment advisory agreement entered into with the Trust (''Management Agreement''). Under the Management Agreement, the primary responsibilities of the Manager, subject to the supervision and direction of the Trust's board of trustees (''Board''), are to provide the Trust with investment management services and to select and contract with one or more investment advisers (''Advisers'') to manage the Funds' investment portfolios. Each Fund currently will be advised by a single Adviser. Each Adviser recommended by the Manager will be selected and approved by the Board, including a majority of the trustees who are not ''interested persons'' (as defined in section 2(a)(19) of the Act), of the Trust, the Manager, or the Advisers (''Independent Trustees''). Each Adviser is, and any future Adviser will be, registered as an investment adviser under the Advisers Act and will perform services under a subadvisory agreement (''Advisory Agreement'') between the Manager and the Adviser. Each Adviser's fees will be paid by the Manager out of the management fees received by the Manager from the Funds.

3. Although the Manager is a newly-formed entity, its parent company, Allstate, has extensive experience in asset management and in evaluating and hiring investment advisers. As a wholly-owned subsidiary of Allstate, the Manager will have access to and draw upon Allstate's advisory experience and expertise. In providing investment management evaluation services, the Manager will conduct quantitative and qualitative analyses of the Advisers and will consider, among other factors, each Adviser's level of expertise, relative performance, consistency of results, and investment discipline or philosophy. The Manager will monitor the compliance of each Adviser with the investment objective and related policies and restrictions of each Fund and will review the performance of each Adviser and report periodically to the Board on such performance. The Manager is responsible for communicating performance expectations and evaluations to each Adviser and ultimately to determine whether each Advisory Agreement should be renewed, modified, or terminated. The Manager will provide reports to the Board with respect to the results of its evaluation, monitoring functions and determinations with respect to each Adviser.

4. Applicants request relief to permit the manager to enter into and materially amend Advisory Agreements without seeking shareholder approval. The requested relief will not extend to an Adviser that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the Trust or the Manager, other than by reason of serving as an Adviser to one or more of the Funds (''Affiliated Adviser'').

5. Applicants also request an exemption form the various disclosure provisions described below that may require each Fund to disclose fees paid by the Manager to the Advisers. The Trust will disclose for each Fund (both as a dollar amount and as a percentage of the Fund's net assets): (a) Aggregate fees paid to the Manger and Affiliated Advisers, and (b) aggregate fees paid to Advisers other than Affiliated Advisers (''Aggregate Fee Disclosure'') The Aggregate Fee Disclosure also will include separate disclosure of any advisory fees paid to any Affiliated Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

[1] Applicants also request relief with respect to all future series of the Trust and to all subsequently registered open-end management investment companies including all series thereof that in the future are advised by the Manger (or any entity controlling, controlled by, or under common control with the Manager), provided that such companies (1) operate in substantially the same manner as the Trust and (2) comply with the terms and conditions of the requested order (''Future Investment Companies''). The Trust is the only existing investment company that currently intends to rely on the requested order.

2. Form N–1A is the registration statement used by open-end investment companies. Items 3, 6(a)(1)(ii), and 15(a)(3) of Form N–1A require disclosure of the method and amount of the investment adviser's compensation.

3. Form N–14 is the registration form for business combinations involving open-end investment companies. Item 3 of Form N–14 requires the inclusion of a ''table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction.''

4. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

5. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Advisers.

6. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

7. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

8. Applicants assert that the Owners are relying on the Manager to select and monitor the activities of the Advisers and to respond promptly to any significant change in the advisory services provided to the Funds. Applicants submit that in many respects, the relationship between the Manager and the Advisers resembles the relationship between a traditionally structured investment company and its investment adviser, where no shareholder approval is required for the investment adviser to change a portfolio manager or revise the portfolio manager's salary or conditions of employment. Applicants note that the Management Agreement will remain fully subject to the requirements of section 15(a) of the Act and rule 18f–2 under the Act.

9. Applicants assert that some Advisers use a ''posted'' rate schedule to set their fees. Applicants believe that the Manger will not be able to negotiate below ''posted'' fee rates with Advisers if each Adviser's fees are required to be disclosed. Applicants submit that the nondisclosure of the individual Adviser's fees is in the best interest of the Funds and the Owners, where disclosure of such fees would increase costs to Owners without an offsetting benefit to the Trust and the Owners.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund or a Future Investment Company may rely on the requested order, the operation of the Fund or the Future Investment Company will be approved by the Owners or a majority of the outstanding voting securities or, in the case of a Fund or a Future Investment Company whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of that Fund or Future Investment Company to the public (or the Owners).

2. The Trust will disclose in the prospectus the existence, substance, and effect of any order granted pursuant to this application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility (subject to oversight to the Board) to oversee the Advisers and recommend their hiring, termination, and replacement.

3. Within ninety (90) days of the hiring of any new Adviser, Owners with assets allocated to any subaccount of a registered Separate Account for which the applicable Fund serves as a funding medium will be furnished all information about the new Adviser or Advisory Agreement that would be included in a proxy statement, except as modified by the order to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Adviser. The Manager will satisfy this condition by providing these Owners with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the 1934 Act and Item 22 of Schedule 14A under the 1934 Act, except as modified permit Aggregate Fee Disclosure.

4. The Manager will not enter into an Advisory Agreement with any Affiliated Adviser without that Advisory Agremenet, including the compensation to paid thereunder, being approved by the Owners with assets allocated to any subaccount of a registered Separate Account for which the applicable Fund serves as a funding medium or by the shareholders in the case of a publicly available Fund.

5. At all times, a majority of the Board will be Independent Trustees and the nomination of new or additional Independent Trustees will continue to be at the discretion of the then-existing Independent Trustees.

6. When an Adviser change is proposed for a Fund with an Affiliated Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and Owners with assets allocated to any subaccount of a registered Separate Account for which the fund serves as a funding medium or shareholders in the case of publicly available Fund and does not involve a conflict of interest from which the Manager or the Affiliated Adviser derives an inappropriate advantage.

7. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of the Trust. The selection of such counsel will be within the discretion of the Independent Trustees of the Trust.

8. The Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability on a per-Fund basis. This information will reflect the impact on profitability of the hiring or termination

of any Adviser during the applicable quarter.

9. Whenever an Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the Manger's profitability.

10. The Manager will provide general management services to the Trust and its Funds, including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio and, subject to review and approval by the Board, will: (i) Set each Fund's overall investment strategies; (ii) evaluate, select, and recommend Advisers to manage all or part of a Fund's portfolio; (iii) allocate and, when appropriate, reallocate a Fund's assets among multiple Advisers; (iv) monitor and evaluate the performance of Advisers; and (v) implement procedures reasonably designed to ensure that the Advisers comply with each Fund's investment objective, policies, and restrictions.

11. No trustee/director of officer of the Trust or director or office of the Manger will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee/director or office) any interest in any Adviser except for: (i) Ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manger; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either an Adviser or an entity that controls, is controlled by, or is under common control with an Adviser.

12. The Trust will disclose in its registration statement the Aggregate Fee Disclosure.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23747 Filed 9–10–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Referral System for Vocational Rehabilitation Providers 0960—NEW

Background

In 1996 the Social Security Administration (SSA) initiated an innovative expansion of its vocational rehabilitation (VR) referral and payment program. Under this program, SSA pays VR providers for the costs of VR services provided to disability beneficiaries, if such services result in the individual going to work at a specified earnings level for at least nine months. Throughout this project, SSA has expanded its VR program to increase the base of providers who are available to serve people with disabilities. By increasing this base, more people will be able to get the services they need to go to work, become independent of the benefit rolls, and thus achieve savings to SSA's trust funds.

In September 1997, SSA contracted with Birch & Davis Associates, Inc. (B&D), to provide management support to its expanded VR referral and payment program. This contract is for a three-year demonstration project known as the Referral System for Vocational Rehabilitation Providers (Project RSVP). SSA continues to be responsible for awarding Alternate Participant (AP) contracts to VR providers, determining the appropriateness of claims submitted by APs, and reimbursing APs for the costs of their services if the requirements for payment are met.

B&D supports SSA's efforts by marketing to and recruiting VR providers, training providers on SSA's VR program requirements, and operating an Information and Referral System to link providers with beneficiaries. In addition, B&D will conduct surveys of beneficiaries and APs to determine customer satisfaction and to identify program areas requiring improvement.

Information Collection

In support of the RSVP project, SSA will conduct semi-annual voluntary information collections of both AP's and Beneficiaries/Recipients (B/R). The data collection effort will be conducted in survey format and has four goals:

1. To help program administrators understand the reasons for varying levels of satisfaction with the program; 2. To help program administrators understand the potential causes for varying levels of success of the program; 3. To guide program change; and 4. If necessary, to plan continuation of the program after the initial trial period.

Through these voluntary surveys, SSA will collect three types of data:

1. Descriptive data that describe the B/R and data that describe the APs' vocational rehabilitation practice that are not available and are necessary to evaluate respondents' satisfaction in the context of their actual experience; 2. Quantitative data on B/R and AP satisfaction with the program; and 3. Free-text comments by B/Rs and APs regarding their experience with the program.

The data will be aggregated for all B/Rs and for all APs. A semi-annual report will be generated for SSA. The information will be used by AP program administrators at SSA and by B&D project management staff. The respondents will be SSI/SSDI beneficiaries and APs under contract with SSA to provide vocational rehabilitation services to beneficiaries.

Survey form	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Survey for APs who have submitted claims	12	2	20	8
Survey for APs who have not submitted a claim	314	2	20	210
Survey for B/Rs who have signed a Rehabilitation or Employment Plan	44	2	20	30
Survey for B/Rs who have not signed a Rehabilitation or Employment Plan	2,000	2	20	1,334
Total Annual Burden Hours Requested				1,582

2. Statement of Income and Resources—0960–0124. The information collected by the Social Security Administration on Form SSA–8010 is necessary in the SSI eligibility/payment process. Information about the income and resources of ineligible spouses/parents/children and sponsors of aliens is used in the ''Deeming'' process. ''Deeming'' is the attribution of another's income to an eligible individual/child/alien. The respondents are ineligible spouses, parents, and children who live in the same household as an eligible individual/child, and sponsors of aliens.

Number of Respondents: 355,000.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 147,917 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Application for Supplemental Security Income-0960–0444. The information collected on the SSA–8001 is used by the Social Security Administration to determine whether applicants for SSI benefits meet all statutory and regulatory requirements for eligibility and, if so, the amount of benefits payable. The respondents are applicants for SSI benefits.

Number of Respondents: 1,011,046.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 252,762 hours.

2. 0960–NEW. State Partnership Initiative (SPI) Cooperative Agreements. Executive Order (E.O.) 13078 dated March 13, 1998, Increasing Employment of Adults With Disabilities, orders that a National Task Force be established to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. E.O. 13078 specifies that the Task Force ''evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities.''

To comply with the E.O., SSA released cooperative agreement announcements in 1998 to approximately 650 State agencies nationwide to conduct demonstration projects that assist States in developing service delivery models that increase the rates of gainful employment of people with disabilities. Eighteen State agencies have been selected to participate in the demonstration projects.

SSA has employed a monitoring and technical assistance contractor, Virginia Commonwealth University (VCU) to collect information from the State awardees' databases on behalf of SSA. VCU will use the information to evaluate whether and to what extent the service delivery models achieve the overall goals of the demonstration projects and will report project results to SSA. SSA will use the results to conduct a net outcome evaluation to determine the long term effectiveness of the interventions.

Following is a table that outlines the public reporting burden of State agencies for this project:

Title of collection	Number of responses	Frequency of response	Average burden per response (minute(s))	Estimated annual burden (hour(s))
Demonstration Site Form	16 (electronic)	One Time	1	.3
	2 (manual)	One Time	1	.1
Participant Demographic Data Form	3,080 (electronic)	One Time	15	770
	300 (manual)	One Time	20	100
Participant Employment Data Form	3,080 (electronic)	One Time	5	257
	300 (manual)	One Time	7	35
Participant Update Form	3,080 (electronic)	Quarterly	4	821
	300 (manual)	Quarterly	5	100
Change in Employment Status	1,540 (electronic)	(1)	3	77
	150 (manual)	(1)	4	10
State Quarterly and	72	Quarterly	(2)	18
State Semiannual and	36	Semiannual	(2)	9
Annual Reports	18	Annual	(2)	4.5
Stakeholder Interviews	50	Varies per Stakeholder.	10	8.3
Total				2,210.2

[1] Completed only if employment changes.

[2] 15 minutes for each report.

(SSA Address), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.
(OMB Address), Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

Dated: September 7, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–23703 Filed 9–10–99; 8:45 am]

BILLING CODE 4190–29–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Executive Meeting No. 3).

TIME AND DATE: 9 a.m. (EDT), September 15, 1999.

PLACE: TVA Knoxville West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

New Business

A—Budget and Financing

A1. Approval of power system operating and capital budgets for Fiscal Year 2000.

A2. Approval of short-term borrowing from the Treasury.

C—Energy

C1. Contract with Bechtel Power Corporation for installation of the replacement steam generators at Sequoyah Nuclear Plant Unit 1.

Information Items

1. Filing of condemnation cases concerning the Charleston District-Riceville Transmission line in McMinn County, Tennessee, and the Wheeler Dam-Guntersville Dam Transmission line in Morgan County, Alabama.

2. Approval of renegotiation and extension of coal purchase contract with Peabody COALSALES Company.

3. Approval of renegotiation of coal purchase contract with Coastal Coal Company, LLC.

4. Approval of TVA contribution rate to the TVA Retirement System for Fiscal Year 2000.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: September 8, 1999.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 99–23910 Filed 9–9–99; 2:19 pm]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on September 13, 1999, from 9:15 a.m. to 2:45 p.m. The meeting will be open to the public from 9:15 a.m. to 12:00 noon and again from 1:45 p.m. to 2:45 p.m. and closed to the public from 12:00 to 1:45 p.m.

DATES: The meeting is scheduled for September 13, 1999, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce, Room 4830, located at 14th Street and Constitution Avenue, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Cory Churches, Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230, (202) 482–4792 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St, NW, Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold a meeting on September 13, 1999 from 9:15 a.m. to 2:45 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 12:00 noon to 1:45 p.m. The meeting will be open to the public and press from 9:15 a.m. to 12:00 p.m., and again from 1:45 p.m. to 2:45 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committees will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 99–23778 Filed 9–10–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 3, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6202.
Date Filed: September 3, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0501 dated 31 August 1999, Composite Resolutions, Minutes—PTC COMP 0502 and 0503 dated 31 August 1999, Intended effective date: 1 April 2000.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–23732 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on September 16, 1999, beginning at 1:30 p.m. and ending at approximately 5 p.m.

ADDRESSES: The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the twenty-fourth in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on September 16, 1999. The meeting was announced on August 11, 1999 (64 FR 43811). For additional information about the meeting, consult that announcement.

Starting at 1:30 p.m. and concluding by 5 p.m., NHTSA's Office of Research and Development will discuss the following topics:

International Harmonized Research Activities (IHRA) including: (1) IHRA Overview and (2) Status Reports on the following IHRA Working Groups: (a) Biomechanics, (b) Side Impact, (c) Frontal Impact Protection/ Compatibility, and (d) Intelligent Transportation Systems.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received in response to the announcement published August 11, 1999.

As announced on August 11, 1999, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing to Raymond P. Owings, Ph.D., Associate Administrator for Research and Development, National Highway Traffic Safety Administration, NRD–01, Washington, DC 20590. Fax number: 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: September 8, 1999.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 99–23712 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(a) RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on September 7, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application number	Applicant	Reason for delay	Estimated date of completion
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	9/30/1999
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	9/30/1999
11862–N	The BOC Group, Murray Hill, NJ	4	9/30/1999
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	9/30/1999
12029–N	NACO Technologies, Lombard, IL	4	9/30/1999
12106–N	Air Liquide America Corporation, Houston, TX	4	9/30/1999
12123–N	Eastman Chemical Co., Kingsport, TN	4	9/30/1999
12125–N	Mayo Foundation, Rochester, MN	4	9/30/1999
12126–N	LaRoche Industries, Inc., Atlanta, GA	4	9/30/1999
12138–N	Gas Supply Resources, Inc., Albany, NY	4	10/29/1999
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	9/30/1999
12146–N	Luxfer Gas Cylinders, Riverside, CA	4	9/30/1999
12148–N	Eastman Kodak Company, Rochester, NY	4	9/30/1999
12156–N	Columbia Falls Aluminum Co., Columbia Falls, MT	4	9/30/1999
12158–N	Hickson Corporation, Conley, GA	4	9/30/1999
12164–N	Rhodia Inc., Shelton, CT	4	9/30/1999
12166–N	Dow Corning Corp., Midland, MI	4	9/30/1999
12171–N	Arichell Technologies, Inc., West Newton, MA	4	9/30/1999
12181–N	Aristech, Pittsburgh, PA	4	9/30/1999
12203–N	Celanese Ltd., Dallas, TX	4	9/30/1999
12205–N	Independent Chemical Corp., Glendale, NY	4	9/30/1999
12206–N	General Electric Silicones, Waterford, NY	4	9/30/1999
12220–N	d/b/a Laird Farms, Waterloo, NY	4	10/29/1999
12230–N	Chemtran Services USA, Inc., Houston, TX	4	9/30/1999
12238–N	Eastman Kodak Co., Rochester, NY	4	10/29/1999

MODIFICATIONS TO EXEMPTIONS

Application number	Applicant	Reason for delay	Estimated date of completion
6611–M	Gardner Cryogenics, Lehigh Valley, PA	4	9/30/1999
6765–M	Gardner Cryogenics, Lehigh Valley, PA	4	10/29/1999
8723–M	Buckley Powder Company, Englewood, CO	4	9/30/1999
266–M	ERMEWA, Inc., Houston, TX	4	10/29/1999
10480–M	Gardner Cryogenics, Lehigh Valley, PA	4	10/29/1999
10921–M	The Procter & Gamble Company, Cincinnati, OH	4	9/30/1999
10929–M	Consolidated Rail Corporation, Philadelphia, PA	4	9/30/1999
10977–M	Federal Industries Corporation, Plymouth, MN	4	9/30/1999
11327–M	Phoenix Services Limited Partnership, Pasadena, MD	4	9/30/1999
11526–M	BOC Gases, Murray Hill, NJ	4	9/30/1999

[FR Doc. 99–23801 Filed 9–10–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33794]

Boston and Maine Corporation and Springfield Terminal Railway Company—Trackage Rights Exemption—Milford-Bennington Railroad Company

Milford-Bennington Railroad Company (MBR) has agreed to grant overhead trackage rights to Boston and Maine Corporation and Springfield Terminal Railway Company (B&M/ST) between approximately milepost N–16.36, in Wilton, NH, and approximately milepost 19.67, in Lyndeboro, NH.[1]

The parties report that they intend to consummate the transaction on or about September 3, 1999. The earliest the transaction can be consummated is September 6, 1999, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to allow B&M/ST to serve a customer in Milford, NH.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33794, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert B. Culliford, Esq., Iron Horse Park, North Billerica, MA 10862.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: September 7, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–23779 Filed 9–10–99; 8:45 am]
BILLING CODE 4915–00–P

[1] While the verified notice of exemption states that the term of the trackage rights agreement will be for two years from August 20, 1999, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions. Before B&M/ST can discontinue its operations over the rail lines, it must obtain appropriate authority under 49 U.S.C. 10903 from the Board.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 2, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 13, 1999 to be assured of consideration.

Departmental Offices/Assistant Secretary for International Affairs/ Office of Program Services

OMB Number: 1505–0123.

Form Number: TD F 90–19.1 and TD F 90–19.2.

Type of Review: Reinstatement.

Title: Survey of Foreign Portfolio Investment in the United States.

Description: This survey determines the level of foreign portfolio investment in the United States, the types of investors, and foreign investment patterns. The data is used for policy formulation, the computation of the U.S. balance of payments and international investment position, and to satisfy 22 U.S.C. 3101. The affected public consists of major U.S. corporations.

Respondents: Business or other for-profit, Federal Government.

Estimated Number of Respondents/ Recordkeepers: 1,200.

Estimated Burden Hours Per Respondent/Recordkeeper: 50 hours.

Frequency of Response: Other (approximately every 5 years).

Estimated Total Reporting/ Recordkeeping Burden: 60,000 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–23780 Filed 9–10–99; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 2, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 13, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1218.

Regulation Project Number: CO–25–96 Final.

Type of Review: Extension.

Title: Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following an Ownership Change of a Consolidated Group

Description: Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. Section 382 limits the amount of income that can be offset by loss carryovers and credits after an ownership change. These final regulations provide rules for applying section 382 to groups of corporations that file a consolidated return.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 12,054.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion, Other (changes in group membership).

Estimated Total Reporting Burden: 662 hours.

OMB Number: 1545–1237.

Regulation Project Number: REG–209831–96 Final (formerly CO–24–96 Final).

Type of Review: Extension.

Title: Consolidated Returns—Limitations on the Use of Certain Losses and Deductions.

Description: Section 1502 provides for promulgation of regulations with respect to corporations that file consolidated income tax returns. These regulations amend the current regulations regarding the use of certain losses and deductions by such corporations.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–23781 Filed 9–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–27–89; FI–61–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, FI–27–89 (TD 8366), Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91 (TD 8431), Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements (§§ 1.67–3, 1.860D–4, 1.860F–4, 1.6049–4 and 1.6049–7).

DATES: Written comments should be received on or before November 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: FI–27–89, Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters, and FI-61–91, Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements.

OMB Number: 1545–1018.

Regulation Project Number: FI–27–89 and FI–61–91.

Abstract: The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 655.

Estimated Time Per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 978.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 3, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–23786 Filed 9–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8820

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8820, Orphan Drug Credit.

DATES: Written comments should be received on or before November 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Orphan Drug Credit.

OMB Number: 1545–1505.

Form Number: 8820.

Abstract: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 9 hours, 39 minutes.

Estimated Total Annual Burden Hours: 965.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 2, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–23788 Filed 9–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209817–96]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–209817–96, Treatment of Obligation-Shifting Transactions (§ 1.7701(l)–2).

DATES: Written comments should be received on or before November 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Obligation-Shifting Transactions.

OMB Number: 1545–1515.

Regulation Project Number: REG–209817–96.

Abstract: This regulation relates to the treatment of certain multiple-party financing transactions in which one party realizes income from leases or similar agreements and another party claims deductions related to that income. In order to prevent tax avoidance, this regulation recharacterizes these transactions in a manner that clearly reflects income. The regulation affects only persons that engage in these transactions. The regulation generally does not apply to routine transactions lacking characteristics of tax avoidance.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 100.

Estimated Time Per Recordkeeeper: 5 hours.

Estimated Total Annual Recordkeeping Burden: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 7, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–23787 Filed 9–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Pilot of an Electronic Transcript Delivery System

AGENCY: Internal Revenue Service (IRS), Department of the Treasury.

ACTION: Notice and Request for Public Comment on Internal Revenue Service Pilot of an Electronic Transcript Delivery System.

SUMMARY: The mission of the Electronic Tax Administration Office of the Department of the Treasury's Internal Revenue Service (IRS) is to revolutionize how taxpayers transact and communicate with the IRS. The IRS seeks comments on a program to automate provision of tax information to a third-party entity designated by the taxpayer. The IRS requests comments on various aspects of the piloting and implementation of this program, as well as specific questions concerning privacy, authentication, and security.

DATES: Comments must be received by October 13, 1999.

ADDRESSES: Mail written comments to: Electronic Transcript Delivery Pilot Project, Electronic Tax Administration, OP:ETA:E:P, Internal Revenue Service, Room C5–463, 5000 Ellin Road, Lanham, MD 20706.

Paper submissions should include three paper copies and a version on diskette in ASCII, Microsoft Word (please specify version), or WordPerfect (please specify version) format. Comments submitted in electronic form should be in ASCII, Microsoft Word (please specify version) or WordPerfect (please specify version) format to: *www.*transcript@m1.irs.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kelley, IRS, (202) 283–1990.

SUPPLEMENTARY INFORMATION:

Background: The mission of the Electronic Tax Administration Office of the Department of the Treasury's Internal Revenue Service (IRS) is to revolutionize how taxpayers transact and communicate with the IRS. Strategies to fulfill the mission include:

- Making electronic filing, payments, transactions and communications so simple, inexpensive, and trusted that taxpayers will prefer these to calling and mailing;
- Providing additional taxpayer access methods to products and services centering on electronic filing, payment, transaction, and communication products and services;
- Aggressively protecting transaction and information integrity and quality; and
- Seeking the best people, ideas and partners to assure IRS success.

In response to the IRS' Restructuring and Reform Act of 1998, the IRS has been tasked with increasing electronic communications and services to the public. One of the services provided by the IRS is to respond to over six (6) million requests annually from taxpayers requesting copies of paper tax returns, return transcripts (an electronic version of your submitted tax return), verification of non-filing and W–2s. Of the six (6) million, approximately two (2) million are from taxpayers requesting that their tax information be sent to a designated ''third-party'' entity. Examples of third-party entities include tax practitioners, financial institutions, the mortgage industry, colleges/universities and local, state, and federal government entities. The most frequent use of tax information by these third parties is to provide income verification for loans, grants, subsidies or other monetary guarantees, while tax practitioners assist taxpayers in resolving tax issues.

Chapter 61 of the Internal Revenue Code addresses the confidentiality and disclosure of returns and return information. Under Section 6103(e) (Disclosure of Persons Having Material Interest), a taxpayer has the right to obtain his/her tax return and/or most return information held by the IRS that pertains to the taxpayer. Under Section 6103(c) (Disclosure of Returns and Return Information to Designee of Taxpayer), a taxpayer may designate a third-party recipient to receive his/her return or return information and may authorize the IRS to release that information to that third party.

The IRS uses Form 4506 ''Request for Copy or Transcript of Tax Form'' for taxpayers to request copies of return transcripts. The current process is as follows:

1. A taxpayer obtains a Form 4506. Form 4506 may be obtained from the IRS' website, an IRS office, or it may be presented to the taxpayer by the third party for the loan, grant, or subsidy application process.
2. The taxpayer completes the Form 4506 to authorize the IRS to release their tax information to a designated third party. Completing the Form 4506 includes signing and dating the Form 4506.
3. The taxpayer mails the completed, signed and dated form to the appropriate IRS Service Center. In cases where the third party has provided the Form 4506 to the taxpayer, the third party mails, or in some cases, delivers the Form 4506 to the appropriate IRS Service Center.
4. The IRS receives the Form 4506, routes it to the appropriate IRS function and retrieves the requested tax information.
5. The IRS mails the requested tax information to the taxpayer or to the third party designated by the taxpayer on the form.

Improving Customer Service

The IRS seeks to develop a process to automate the paper process of the Form 4506 for third-party requests. The system would electronically receive and process requests for disclosure of tax return information from a third-party entity authorized by individual taxpayers. To assist the IRS in final development of this program, the IRS seeks comments and feedback from taxpayers and the private and public sectors on access methods.

Since one third of the Form 4506 requests (over two (2) million annually) are taxpayers requesting their tax information be sent to a third party, the IRS seeks to improve customer service to the taxpayer by:

(1) Accelerating Delivery Time. Currently, the receipt, processing and retrieval of the return information for a designated third party takes the IRS approximately seven (7) to ten (10) days, excluding the time it takes for the tax information to be mailed to the third

party. It is proposed that the electronic delivery of return transcripts could be made available within a 24-hour time period.

(2) Providing Electronic Authentication and Signature. The proposed system would have an electronic Form 4506 that would be filled out on a computer. Electronic authentication and an electronic signature would ensure to the IRS that the taxpayer is authorizing the release of the information.

(3) Making the Process a One-Stop Service. Currently, the taxpayer (or business entity using the Form 4506 as part of their financial benefit processing package) must retrieve the Form 4506 from an on-line site or from an IRS office. The proposed system would provide this in an electronic form through a computer at the office where the taxpayer is applying for the loan, benefit, subsidy, or other financial transaction.

(4) Reducing the Amount of Information Currently Released Through a Standard Return Transcript. Currently, when a taxpayer authorizes his/her return transcript be sent to a third party, a full return transcript (over 200 lines of information transcribed from the taxpayer's return) is sent. The proposed system would tailor the needs of public and private industry to specific information from the taxpayer's return that will aid in the processing of the application.

(5) Ensuring Timely Processing of the Request. Currently, the third-party entity providing the Form 4506 to the taxpayer at the time of application processing may request the taxpayer to sign but not date the form. This allows the third-party to send in the Form 4506 at a later date, in instances such as a mortgage resale which may occur a year or two from the original application processing. The proposed system would authenticate the taxpayer to the IRS (see item #2 above) and then electronically date the request, locking it from further manipulation. The taxpayer will be assured that the designated recipient is receiving the data within a 24-hour period.

Proposed Pilot of the Electronic Program

The IRS plans to pilot an electronic transcript delivery system with approximately 100 industry users. Pilot participants (hereinafter referred to as ''Contractor'') will be selected competitively through the Request For Proposal (RFP) process and will be awarded contracts, with the possibility of a user fee, for a period of up to one year, with an option to extend the term of the contract.

The RFP will be open for thirty (30) days to all private sector businesses/firms in the following industries in the state of California who perform income verification for loans, grants or subsidies or who provide resolution to tax problems or issues:

	Standard industrial classification codes
Tax Practitioners	Industry Numbers 7291, 8721.
Financial Institutions	Major Group 60.
Mortgage Industries	Major Group 61.
Credit Bureaus/Credit Reporting Services	Industry Number 7323.

These industries comprise the largest volume of designated recipients on the Forms 4506 from taxpayers and will enable the IRS to pilot with a large audience to test an electronic transcript delivery system in terms of customer satisfaction, system capacity and security, and ease of use. For the pilot, the geographical limitation to the state of California is to maintain software support and reduce burden and cost to Contractors for training. In addition, it will limit costs to the IRS in random reviews of system performance, security of information checks, observation of taxpayer processing and Contractor performance to the terms and conditions of the contract.

The capability to collect a user fee for the electronic transcript service is being developed and a user fee may be collected from the Contractors at some point during the pilot.

The Contractors will be required to have available (purchase, lease or rent) hardware equipment and software systems to be specified in the RFP. This equipment must be available by the start up of the training period and will be needed for the entire length of the pilot. Training on the systems will be at the expense of the Contractors and will be structured as a two-day class at the IRS Service Center in Fresno, California.

During the pilot, the IRS will ask for several reports. Status reports to be completed by the Contractors will be used to evaluate problems, determine any changes to be made during the pilot, evaluate lessons learned and to gather recommendations for improvement of the system. These reports are geared towards the Contractor's experience in dealing with the system, the customers, the hardware and software, the quality of training, the assistance provided by the IRS' Help Desk and the usefulness of an IRS-provided User's Guide.

The IRS will also conduct a Taxpayer Satisfaction Survey with a random sample of taxpayers who participated in the electronic transcript delivery pilot. The Contractors will not have knowledge of the particular taxpayers selected for this random survey.

To help the IRS evaluate discrepancies between income reported by a taxpayer versus income stated on an application form, the Contractors will be required to complete a form that captures statistical data on discrepancies of income reporting. This will require the Contractors to track and record the number of requests processed, the number of discrepancies from the information provided by the taxpayers and the number of loans, grants or subsidies that were declined based on the data provided by the electronic transcript delivery pilot. All information collected will be statistical in nature and will not identify individual taxpayers.

The Contractor will also be required to provide a written notice to each taxpayer prior to their participation in the electronic transcript delivery pilot. This written notice makes the taxpayer aware of their privacy interests and explains the purpose and scope of the pilot.

A draft Request For Proposals (RFP) titled ''Draft Request For Proposals TIRNO–99–R–00043'' is posted on the IRS' Procurement website at www.procurement.irs.treas.gov/opportun.htm. This accompanies a Request For Information (RFI) (TIRNO–99–H–00005), which is the method the IRS is using to seek business responses to this program.

One of the most important requirements of the RFP will be for the Contractors to maintain the confidentiality and security of the taxpayer's data. Although this information is supplied by the Contractor at the taxpayer's consent, the IRS will require that all information received through this program meet the following stringent security requirements:

(1) Tax return information will be kept confidential.

(2) Tax return information will be used solely for the purpose directed by the taxpayer.

(3) Tax return information will be stored in locked containers when not in use.

(4) Tax return information will not be discussed unless specifically referring to the taxpayer's application.

(5) Tax return information will not be further disclosed, traded, bartered, or sold without the express authorization of the taxpayer (i.e., the Contractor will be required to obtain another authorization from the taxpayer for further disclosures).

Requested Comments

The Internal Revenue Service is seeking comments and input from industry, federal, state and local agencies and taxpayers concerning the piloting/implementation of this concept. In particular, the Internal Revenue Service is interested in responses to the following, but will appreciate all comments or reactions to the proposed pilot:

1. Based on commercial practice, what would be the best vehicle to deliver this product (e.g., encrypted Internet, encrypted e-mail, encrypted modem with digitized signature pads, etc.)? What issues do each of these methods raise with regards to security, authentication, safeguarding data, etc.?

2. How might companies and/or industry sectors self regulate the safeguarding of sensitive taxpayer information?

3. Please comment on the effort which businesses and agencies expend in income verification on an annual basis.

4. Do you, your company or agency currently do sensitive transactions related to income verification or tax resolution issues over the Internet or via e-mail? Are most of these types of interactions internet-based or paper-based? Is your office fully automated (i.e., do all employees have a computer, e-mail and Internet accessibility?)

5. Is there common knowledge and use in your industry of the IRS' Form 4506 and the ability to receive a copy of a paper return, return transcript, W–2 or verification of non-filing?

6. What on-line experiences have you encountered in which privacy and safeguarding of income verification or tax resolution information have been at issue? In what instances have they appeared at risk? In what instances were they well protected? In what ways have businesses or organizations been responsive to privacy and information safeguarding concerns? Have you had any negative experiences in protecting your privacy on line?

7. What circumstances give rise to good privacy and information safeguarding protection in a traditional business setting or on line?

8. Please comment on whether you feel an electronic transcript system should be made universally available to any business requiring income verification or tax resolution. Would 24-hour delivery of income verification by the IRS accomplish accelerated processing of a loan, grant or subsidy or resolution of a tax issue?

9. Please comment on the proposed 24-hour delivery versus the current seven (7) to ten (10) day process. What advantages would you, your business or agency have if the information were available in a ''real time'' on-line basis?

10. Please comment on whether you feel third-party entities would maintain the confidentiality and security of the provided return information.

11. Do you, your business or agency regularly sell customer information for marketing or advertising purposes?

12. What do you, your business or agency see as methods to increase confidentiality, security and improve customer service to the taxpayer in providing electronic transcripts?

13. What do you, your business or agency see as elements of enforcement mechanisms necessary for maintaining effective confidentiality, security or enhancing customer service to the taxpayer?

14. What do you, your business or agency see as the main advantage(s) and disadvantage(s) of such a system?

15. What would you, your business or agency identify as an appropriate consequence for any mishandling, misuse or unauthorized disclosure of your tax return information by a third party that requires taxpayer information to process a loan, grant or subsidy or resolve a tax issue?

16. What existing privacy policies do you, your business or agency follow? In what ways do they effectively address concerns about privacy in the information to which they apply? In what ways do they fail?

17. Please comment on what you think the responsibilities of the government, businesses or agencies are in protecting taxpayer data. To what extent do these parties have a right to collect and use information to further their commercial interests?

18. Should the government have an interest in reducing the proliferation of taxpayer consent-based disclosures?

19. Please comment on whether you think that a growth in taxpayer consent-based disclosures will have an impact (positive or negative) on voluntary tax law compliance by the taxpayers.

20. Would you, your business or agency be amenable to paying a user fee for this accelerated service? If so, what would you see as a reasonable charge for this service?

21. What would you, your business or agency see as a viable means of authenticating the taxpayer to the IRS within this electronic format? What form of electronic signature (e.g., selection of a personal identification number, signing digitized signature pad, a public key-private key system, etc.) would be best and would ensure legal recourse?

22. What type of information do you, your business or agency use in processing applications for income verification for loans, grants, subsidies, etc.? Is this information corroborated with information secured from other private or public agencies?

23. Please comment on the types of written reports and statistical accounting required by the pilot participants.

24. Please comment on the draft RFP (Draft Request For Proposals TIRNO–99–R–00043) at the IRS' website (www.procurement.irs.treas.gov/opportun.htm) including input on contractual boundaries, rules and regulations.

25. Please indicate your industry type or if you are an individual.

Dated: August 30, 1999.

Robert E. Barr,

Assistant Commissioner, Electronic Tax Administration.

[FR Doc. 99–23789 Filed 9–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Resolution Authorizing

(1) Disposition of Securities Held by Organization, and (2) Execution and Delivery of Bonds of Indemnity.

DATES: Written comments should be received on or before November 12, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Resolution Authorizing (1) Disposition of Securities Held by organization, and (2) Execution and Delivery of Bonds of Indemnity.

OMB Number: 1535–0052.

Form Number: PD F 1011.

Abstract: The information is requested to establish the authority of an organization to dispose of registered United States securities and/or execute bonds of indemnity.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business or other for-profit/not-for-profit institutions.

Estimated Number of Respondents: 485.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 243.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 7, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–23680 Filed 9–10–99; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Only the Best'': Masterpieces of the Calouste Gulbenkian Museum, Lisbon

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Only the Best'': Masterpieces of the Calouste Gulbenkian Museum, Lisbon imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY., from on or about November 15, 1999 to on or about February 27, 2000, is in the Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW Washington, DC 20547–0001.

Dated: September 7, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–23782 Filed 9–10–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Still-Life Paintings From the Netherlands, 1550–1720''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit ''Still-Life Paintings from the Netherlands, 1550–1720'' imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Cleveland Museum of Art, Cleveland, OH, from on or about October 31, 1999, to on or about January 9, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Carol Epstein, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–6981, or USIA, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 8, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–23783 Filed 9–10–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; Program Title: The FREEDOM Support Act/Future Leaders Exchange (FSA/FLEX) Program; Inbound, NIS Secondary School Initiative

NOTICE: Request for proposals.

SUMMARY: The Youth Programs Division/Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the FREEDOM Support Act (FSA)

Future Leaders Exchange (FLEX) program. For applicants' Information, on October 1, 1999, the Bureau will become part of the U.S. Department of State. The integration will not affect the content of this announcement or nature of the program described. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to recruit and select host families for high school students between the ages of 15 and 17 from the New Independent States (NIS) of the former Soviet Union. In addition to identifying schools and screening, selecting, and orienting host families, organizations will be responsible for: orienting students at the local level; providing support services for students; arranging enhancement activities that reinforce program goals; monitoring students during their stay in the U.S.; providing re-entry training; and assessing student performance and progress. The award of grants and the number of students who will participate is subject to the availability of funding in fiscal year 2000.

Program Information

Overview

Background

Academic year 2000/01 will be the eight year of the FSA/FLEX program, which now includes over 7,100 alumni. This component of the NIS Secondary School Initiative was originally authorized under the FREEDOM Support Act of 1992 and is funded by annual allocations from the Foreign Operations and the Bureau of Educational and Cultural Affairs appropriations. The goals of the program are to promote mutual understanding and foster a relationship between the people of the NIS and the U.S.; assist the successor generation of the NIS to develop the qualities it will need to lead in the transformation of those countries in the 21st century; and to promote democratic values and civic responsibility by giving NIS youth the opportunity to live in American society and participate in goal-oriented activities for an academic year.

Objectives

To place approximately 1,000 pre-selected high school students from the NIS in qualified, well-motivated host families and welcoming schools. To expose program participants to American culture and democracy through homestay experiences and enhancement activities that will enable them to attain a broad view of the society and culture of the U.S. To encourage FSA/FLEX program participants to share their culture, lifestyle and traditions with U.S. citizens. Through participation in the FLEX program, students should:

1. Acquire an understanding of important elements of a civil society. This includes concepts such as volunteerism, the idea that American citizens can and do act at the grass roots level to deal with societal problems, and an awareness of and respect for the rule of law.

2. Acquire an understanding of a free market economy and private enterprise. This includes an awareness of privatization and an appreciation of the role of the entrepreneur in economic growth.

3. Develop an appreciation for American culture.

4. Interact with Americans and generate enduring ties.

5. Teach Americans about the cultures of their home countries.

6. Gain leadership capacity that will enable the initiation and support of development and community activities in their role as program alumni.

Other Components

Two organizations operating as a consortium have been awarded grants to perform the following functions: recruitment and selection of students; targeted recruitment for students with disabilities; assistance in documentation and preparation of IAP–66 forms; preparation of cross-cultural materials; pre-departure orientation; international travel from home to host community and return; facilitation of ongoing communication between the natural parents and placement organizations, as needed; maintenance of a student database and provision of data to the Bureau; and ongoing follow-up with alumni after their return to the NIS. Additionally, a separate grant will be awarded for a one-week mid-year civic education program in Washington, D.C., for a select number of students who successfully compete for the Washington program. Most of the students with disabilities, as well as a select number of additional students who are identified as needing English language enhancement before entering their host communities, will attend an English enrichment and cultural orientation program in July 2000, conducted under a grant awarded exclusively for that purpose. The announcements of the competitions for these grants will be published separately.

Guidelines

Organizations chosen under this competition are responsible for the following: recruitment, screening, selection, and cultural-specific orientation of host families; school enrollment; local orientation for participants; placement of a small number of students with disabilities; ensuring that all students identified for the pre-academic-year English and cultural enrichment program have their permanent year-program; specialized training of local staff and volunteers to work with NIS students; preparation and dissemination of materials to students pertaining to the respective placement organization; program-related enhancement activities; supervision and monitoring of students; trouble shooting and periodic reporting on students' progress; when appropriate, communication with the organizations conducting other program components; evaluation of the students' performance; quarterly evaluation of the organization's success in achieving program goals; and re-entry training to prepare students for readjustment to their home environments.

Applicants may request a grant for the placement of at least 20 students. There is no ceiling on the number of students who may be placed by one organization. It is anticipated that 10 to 15 grants will be awarded for this component of the FLEX program. Placements will be distributed throughout the U.S. Students may be clustered in one or more regions or dispersed. If dispersed, applicants should demonstrate that training of local staff ensures their competence in providing NIS-specific orientation programs, appropriate enhancement activities, and quality supervision and counseling of students from the NIS. Please refer to the Solicitation Package, available on request from the address listed below, for details on essential program elements, permissible costs, and criteria used to select students.

Grants should begin at the point that the complete applications on selected finalists are delivered to the placement organizations, no later than March 15, 2000. Participants arrive in their host communities during the month of August and remain for 10 or 11 months until their departure during the period mid-May to late June 2001.

Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Applicants should submit the health and accident insurance plans they intend to use for students on this program. The Bureau will compare any external plans with the Bureau's plan and make a determination of which will be applicable.

Participants will travel on J–1 visas issued by the Bureau using a government program number. Organizations must comply with J–1 visa regulations in carrying out their responsibilities under the FLEX program. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Per capita costs should not exceed $4,850. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) A monthly stipend and incidentals allowance for participants, as established by the Bureau.

(2) Costs associated with student enhancements and orientations.

(3) Administrative costs associated with host family recruiting, staff training, monitoring, and other functions.

(4) Health and accident insurance. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number E/P–00–06.

FOR FURTHER INFORMATION CONTACT: The Office of Youth Programs, ECA/PE/C/PY, Room 568, Bureau of Educational and Cultural Affairs, 301 4th Street, S.W., Washington, D.C. 20547, tel. (202) 619–6299, fax (202) 619–5311, e-mail <amussman@usia.gov> to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Anna Mussman on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Monday, October 25, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 6 copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: E/P–00–06, Office of Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, the Bureau shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Department of State regional authorities and embassies overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department of State entities. Final funding decisions are at the discretion of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity, including assurance that all students will be

placed in a timely fashion. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable and feasible and should coincide with those for the FLEX program stated above. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity both in host community and family placements and in program content (e.g., orientation, enhancement activities, community service).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to ensure that all functions are carried out efficiently to achieve the program goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by contracting authorities. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit quarterly reports, which should be included as an inherent component of the work plan.

9. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world. The funding authority for the program above is provided through legislation pertaining to the Bureau and Foreign Operations appropriations.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposals budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: September 7, 1999.

William P. Kiehl,

Acting Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–23661 Filed 9–10–99; 8:45 am]

BILLING CODE 8230–31–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on September 15 in Room 600, 301 4th Street, SW, Washington, DC, from 9:00 a.m. to 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Please call Jim Conley, (202 619–4457, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: September 3, 1999.

Rose Royal,

Management Analyst Federal Register Liaison.

[FR Doc. 99–23662 Filed 9–10–99; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Monday
September 13, 1999

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57 et al.
Health Standards for Occupational Noise Exposure; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70 and 71

RIN 1219–AA53

Health Standards for Occupational Noise Exposure

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

ACTION: Final rule.

SUMMARY: This final comprehensive rule replaces MSHA's existing standards for occupational noise exposure in coal mines and metal and nonmetal mines. The final rule establishes uniform requirements to protect the Nation's miners from occupational noise-induced hearing loss. The rule is derived in part from existing MSHA noise standards, and from the Department of Labor's existing occupational noise exposure standard for general industry promulgated by the Occupational Safety and Health Administration (OSHA).

As a result of the Agency's ongoing review of its safety and health standards, MSHA determined that its existing noise standards, which are more than twenty years old, do not adequately protect miners from occupational noise-induced hearing loss. A significant risk to miners of material impairment of health from workplace exposure to noise over a working lifetime exists when miners' exposure exceeds an 8-hour time-weighted average (TWA_8) of 85 dBA.

MSHA expects that the final rule will significantly reduce the risk of material impairment within the mining industry as a whole.

DATES: The final rule is effective September 13, 2000.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Jones can be reached at cjones@msha.gov (Internet E-mail), 703/235–1910 (voice), or 703/235–5551 (fax).

SUPPLEMENTARY INFORMATION:

I. Background

a. Noise-Induced Hearing Loss

Noise is one of the most pervasive health hazards in mining. The National Institute for Occupational Safety and Health (NIOSH) has identified noise-induced hearing loss as one of the ten leading work-related diseases and injuries. Exposure to hazardous sound levels results in the development of occupational noise-induced hearing loss, which is distinguishable from hearing loss associated with aging or with medical conditions. For many years, the risk of acquiring noise-induced hearing loss was accepted as an inevitable consequence of mining occupations, in which the use of mechanized equipment often subjects miners to hazardous noise exposures. But noise-induced hearing loss can be diagnosed, prevented, and its progress delayed.

Prolonged exposure to noise over a period of years generally causes permanent damage to the auditory nerve or its sensory components. Hearing loss is rapid when exposures are over a prolonged period at high sound levels. Hearing loss may also be gradual, so that the impairment is not noticed until after a substantial amount of hearing loss occurs. Noise-induced hearing loss is irreversible. Considerable safety risks arise because workers with noise-induced hearing loss may not hear audible warnings and safety signals. In addition, most people with noise-induced hearing loss have reduced hearing sensitivity to higher frequencies and lose the ability to discriminate consonants, making them unable to distinguish among words differing only by one or more consonants. This impairment jeopardizes the safety of affected miners as well as the safety of those around them, and, as a result, general employee health and productivity.

Revising the existing rules to protect miners from noise-induced hearing loss is necessary because exposure to workplace noise continues to present a significant risk of material impairment of health to miners. MSHA estimates that 13.4% of the mining population of the United States (approximately 13,000 coal miners and 24,000 metal and nonmetal miners) will develop a material hearing impairment during a working lifetime under current working conditions. MSHA anticipates that miners will benefit substantially from the final rule's effect of improving miner health and lessening the personal and social hardships of occupational noise-induced hearing loss.

b. Rulemaking Process

MSHA's existing noise standards in metal and nonmetal mines (30 CFR §§ 56.5050 and 57.5050) and in coal mines (30 CFR §§ 70.500–70.511, and §§ 71.800–71.805) were originally promulgated in the early 1970's. They were derived from the Walsh-Healey Public Contracts Act occupational noise standard, which adopted a permissible exposure level of 90 dBA, a 5–dB exchange rate, and a 90–dBA threshold. After considering the recurrent incidence of noise-induced hearing loss among miners and repeated recommendations from the mining community that MSHA adopt a single noise standard covering all mines, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) (54 FR 50209) on December 4, 1989. In response, the Agency received numerous comments from mine operators, trade associations, labor groups, equipment manufacturers, and other interested parties.

After reviewing the comments to the ANPRM, MSHA published a proposed rule (61 FR 66348) on December 17, 1996. The comment period, originally scheduled to close on February 18, 1997, was extended to April 21, 1997 (62 FR 5554), and 6 public hearings were conducted in Beckley, West Virginia; St. Louis, Missouri; Denver, Colorado; Las Vegas, Nevada; Atlanta, Georgia; and Washington, D.C. Transcripts of the proceedings were made available to the public. Supplementary statements and data were received from interested persons until the record closed on August 1, 1997.

After the close of the record, NIOSH sent MSHA a report entitled, ''Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners.'' On December 16, 1997, MSHA published a notice (62 FR 65777) announcing that the report was available and had been entered into the rulemaking record. Then, on December 23, 1997, MSHA published a follow-up notice (62 FR 67013) inviting interested persons to comment on the NIOSH report, with the comment period closing on February 23, 1998.

Early commenters on the proposal expressed concern that the spirit of section 103(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) was not being met. Section 103(c) requires that miners or their representatives be allowed to observe any monitoring or measuring of hazards in their workplaces and to have access to monitoring records. Proposed § 62.120(f) contained a provision requiring operators to establish a system of monitoring for effectively evaluating each miner's noise exposure, but did not require that miners be allowed to observe.

In response, on December 31, 1997, MSHA published a notice (62 FR 68468) supplementing its proposed rule with proposed § 62.120(g), asked for comments, and scheduled a public hearing. The comment period for the supplement closed on February 17, and a public hearing was held in

Washington, DC on March 10. The post-hearing comment period and rulemaking record closed on April 9, 1998.

On May 26, 1998, MSHA published a notice (63 FR 28496) announcing its preliminary determination of no significant environmental impact; requesting comments; and reopening the rulemaking record for the limited purpose of receiving these comments.

The agency received many comments on the proposed noise rule, including the supplemental proposed rule on observation of monitoring. The agency received a total of 182 written and electronic comments. In addition, 57 speakers provided verbal comments at the public hearings. Comments were received from various entities including mine operators, industry trade associations, such as the National Mining Association, National Stone Association, American Iron and Steel Institute and American Portland Cement Alliance; organized labor groups, such as the United Mine Workers of America and the United Steelworkers of America; noise equipment manufacturers; the American Industrial Hygiene Association; the National Hearing Conservation Association; the Acoustical Society of America; colleges and universities; and other Federal agencies, such as NIOSH and the U.S. Small Business Administration.

c. Current Standards

MSHA's existing maximum noise exposure levels for metal and nonmetal mines (30 CFR 56/57.5050) and for coal mines (30 CFR 70.500 through 70.511 and 71.800 through 71.805), were derived from the Walsh-Healey Public Contracts Act occupational noise standard. The standards adopted a permissible exposure level of 90 dBA as an eight-hour time weighted average and a 5–dB exchange rate.

MSHA's existing metal and nonmetal noise standards require the use of feasible engineering or administrative controls when a miner's noise exposure exceeds the permissible exposure level. Hearing protectors are also required if the exposure cannot be reduced to within the permissible exposure level. The existing metal and nonmetal standards do not require the mine operator to post the procedures for any administrative controls used, to conduct specific training, or to enroll miners in hearing conservation programs.

MSHA's existing practices for coal mines are different from those for metal and nonmetal mines due to differences in the circumstances under which the Agency is authorized to issue citations. In metal and nonmetal mines, a citation is issued based exclusively on the exposure measurement. In coal mines, a citation is not issued if appropriate hearing protectors are being worn. Moreover, when a coal mine operator receives a citation for noise exposure exceeding the permissible exposure level, the operator is required to promptly institute administrative and/or engineering controls to assure compliance. In addition, within 60 days of receiving the citation, a coal mine operator is required to submit a plan to MSHA for the administration of a continuing, effective hearing conservation program.

The Federal Mine Safety and Health Review Commission (Commission) has addressed the ''feasibility'' of noise controls regarding the existing standards. In determining technological feasibility, the Commission has held that a control is deemed achievable if through reasonable application of existing products, devices, or work methods with human skills and abilities, a workable engineering control can be applied to the noise source. The control does not have to be ''off-the-shelf;'' but it must have a realistic basis in present technical capabilities. In determining economic feasibility, the Commission has held that MSHA must assess whether the costs of the control are disproportionate to the ''expected benefits'', and whether the costs are so great that it is irrational to require its use to achieve those results. The Commission has expressly stated that cost-benefit analysis is unnecessary in order to determine whether a noise control is required. According to the Commission, an engineering control may be feasible even though it fails to reduce exposure to permissible levels contained in the standard, as long as there is a significant reduction in exposure. In *Todilto Exploration and Development Corporation*, 5 FMSHRC 1894 (1983), the Commission accepted the Agency's determination that a 3 dBA reduction is significant.

MSHA has interpreted the ''expected benefits'' to be the amount of noise reduction achievable by the control. MSHA generally considers a reduction of 3 dBA or more to be a significant reduction of the sound level because it represents at least a 50% reduction in sound energy. Consequently, a control that achieves relatively little noise reduction at a high cost could be viewed as not meeting the Commission s test of economic feasibility.

MSHA estimates that the costs attributable to the final rule requirement to use engineering and administrative controls would be significantly offset by the paperwork savings the coal mining industry will accrue. The existing costly, paperwork-intensive requirements for biannual coal miner noise exposure surveys, supplemental noise surveys, calibration reports, survey reports, and survey certifications are eliminated by the final rule. Rather, the final rule has a flexible requirement for mine operators to establish a monitoring program that effectively evaluates miner exposures.

II. Final Rule

a. General Requirements Applicable to All Mines

The following summarizes general requirements for all mines in the final rule although, the rule and this preamble should be consulted for details. A mine operator must establish a system of monitoring which evaluates each miner's noise exposure. In addition, the mine operator must give prior notice and provide affected miners and their representatives with an opportunity to observe the monitoring. When an exposure equals or exceeds the action level, exceeds the permissible exposure level, or exceeds the dual hearing protection level, the mine operator must notify a miner of his or her exposure. A copy of the notification must be kept for the duration of the affected miner's exposure at or above the action level and for at least 6 months thereafter.

If a miner's noise exposure is less than the action level, no action is required by the mine operator. If the miner's exposure equals or exceeds the action level, but does not exceed the permissible exposure level, the operator must enroll the miner in a hearing conservation program which includes a system of monitoring, voluntary use of operator-provided hearing protectors, voluntary audiometric testing, training, and record keeping. If a miner's exposure exceeds the permissible exposure level, the operator must use or continue to use all feasible engineering and administrative controls to reduce exposure to the permissible exposure level, enroll the miner in a hearing conservation program including ensuring the use of operator-provided hearing protectors, post administrative controls and provide a copy to the affected miner; and must never permit a miner to be exposed to sound levels exceeding 115 dBA. If a miner's exposure exceeds the dual hearing protection level, the operator must enroll the miner in a hearing conservation program, continue to meet all the requirements for exposures above the permissible exposure level, and

ensure the concurrent use of an earplug and earmuff.

b. Major Features of the Final Rule

Consistent with OSHA's noise exposure standard, MSHA has adopted the existing permissible exposure level of 90 dBA as an 8-hour time-weighted average (TWA_8). The final rule, however, requires the use of all feasible engineering and administrative controls to reduce a miner's noise exposure to the permissible exposure level. Such controls may be used separately or in combination. When controls do not reduce exposure to the permissible exposure level, miners must be provided hearing protectors and mine operators are required to ensure that the miners use them.

The final rule also addresses a currently recognized hazard that is not covered by existing standards: noise exposures at or above a TWA_8 of 85 dBA but below the permissible exposure level. Exposure at a TWA_8 of 85 dBA is termed the ''action level,'' and, under the final rule, mine operators are required to enroll miners exposed at or above the action level in a hearing conservation program consisting of exposure monitoring, the use of hearing protectors, audiometric testing, training, and recordkeeping.

The final rule has been revised from the proposal in several respects, which makes it more consistent with existing OSHA regulations:

MSHA had proposed that all sound levels between 80 dBA and 130 dBA be included in determining exposure for both the action level and permissible exposure level. Based on comments received, the final rule requires inclusion of sound levels between 90 dBA and at least 140 dBA for determining exposure with respect to the permissible exposure level. The final rule adopts the proposed inclusion of sound levels from 80 dBA to at least 130 dBA for determining exposure with respect to the action level.

In response to the proposed definition of a hearing conservation program, commenters suggested that, for the sake of consistency, the final rule adopt the existing definition included in the OSHA noise standard. MSHA agrees and has revised the final rule to incorporate all relevant elements of a hearing conservation program under this definition.

The proposed rule would have required mine operators to ensure that miners participate in an audiometric testing program if their noise exposures were above the permissible exposure level. In response to commenters, the final rule requires only that mine operators offer audiometric testing, leaving it to the miner to decide whether to participate in the testing program.

The proposed rule would have required that mine operators ensure that miners were not exposed to workplace noise during a 14-hour quiet period required before a baseline audiogram is taken. In addition, the use of hearing protectors would not have been permitted as a substitute for the quiet period. Many commenters suggested that prohibiting the use of hearing protectors to meet the quiet period requirement was not practical, because many miners work 12-hour shifts and that OSHA's noise standard allows hearing protection to be used during the quiet period. The final rule permits the use of hearing protectors during the quiet period.

The proposed rule would have required a mine operator, upon termination of a miner's employment, to provide the miner with a copy of the records required under part 62. Commenters overwhelmingly supported giving copies of records only to those miners who request them. In response to comments, the proposed provision was not adopted in the final rule, and the final rule instead requires that mine operators provide copies of records to miners upon request.

The final rule departs from the OSHA noise standard in several respects:

The final rule adopts the proposed ''dual hearing protection level'' at a TWA_8 of 105 dBA. This requirement for dual hearing protection is supported by research showing that greater noise reduction results from the use of both earplugs and earmuffs than from either type of hearing protector alone. Accordingly, mine operators must provide and require the use of both an earplug and an earmuff at a TWA_8 of 105 dBA.

The final rule does not include detailed, technical procedures and criteria for conducting audiometric testing. Rather, the rule is performance-oriented, requiring only that audiometric testing be conducted in accordance with scientifically validated procedures, such as those in OSHA's noise standard.

Nor does the final rule require determining the adequacy of hearing protectors. Although OSHA's noise standard includes such information in its mandatory Appendix B, MSHA's research on mining applications indicates that hearing protectors provide less reduction than their ratings suggest and that the reduction achieved is highly variable. These two factors prevent accurate prediction of the effectiveness of hearing protectors for a given individual. However, MSHA recognizes that in some environments it may not be feasible to reduce miners' noise exposures to the permissible exposure level with the use of engineering or administrative controls. In these circumstances, the interim use of personal hearing protectors may offer the best protection until controls become feasible and can be implemented.

The final rule is consistent with Executive Order 12866, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act (SBREFA), the National Environmental Policy Act (NEPA), the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Mine Act. MSHA estimates that metal and nonmetal mines with fewer than 20 miners would incur an average cost increase of about $460 annually. Coal mines with fewer than 20 miners would have an average cost increase of about $400, reflecting the elimination of the numerous survey and paperwork requirements in the current noise rules for the coal sector.

In accordance with the SBREFA Amendments to the Regulatory Flexibility Act, MSHA has taken steps to minimize the compliance burden on small mines. The effective date of the final rule, one year after promulgation, provides time for small mines to achieve compliance. In addition, MSHA is mailing a copy of the final rule to each mine operator, which benefits small mine operators.

MSHA anticipates that the mining community will benefit substantially from the final rule. The primary benefit will be a sizable reduction, by as much as two-thirds, in the incidence of occupational hearing impairment among miners. The final rule will also serve to mitigate the progression of hearing loss in working miners and preserve the health and quality of life of miners newly entering the industry.

Two charts compare key features of the final standard to MSHA's existing standards. Note that entries in the charts and the discussions in the preamble reflect legal and/or policy interpretations that would not be apparent from the text of the standards. Other parts of this preamble should be consulted for details.

CHART 1: GENERAL REQUIREMENTS

Noise level	Final rule	Existing metal and nonmetal rules	Existing coal rules
At or above a TWA_8 of 85 dBA (action level).	Enroll miner in HCP which includes requirements for training, monitoring, recordkeeping, voluntary hearing tests, voluntary use of operator-provided HP in most cases, but use of HP is mandatory in particular instances.	No requirements	No requirements.
Above a TWA_8 of 90 dBA (PEL).	Use or continue to use all feasible engineering and administrative controls to reduce exposure to PEL; enroll miner in an HCP including ensuring use of operator-provided HP, post administrative controls and provide copy to affected miner, never permit miner to be exposed to sound levels exceeding 115 dBA.	Use all feasible engineering or administrative controls and provide HP if noise level cannot be lowered to PEL.	Use all feasible engineering and/or administrative controls, but can first reduce exposure by rated value of HP minus 7 unless cited for failure to require HP use; also must enroll miners in HCP if cited.
At or above 105 dBA (dual hearing protection level).	Ensure concurrent use of earplug and earmuff type HPs in addition to above requirements for the action level and PEL.	Limited requirement for dual HPs.	N/A

Abbreviations: HP (hearing protector), HCP (hearing conservation program), TWA_8 (eight-hour time-weighted average), dBA (decibel, A-weighted), PEL (permissible exposure level); Hz (hertz), and n/a (not applicable).

COMPARISON CHART 2: GENERAL FEATURES

Feature	Final rule	Existing metal and nonmetal rules	Existing coal rules
Monitoring	Operator must establish an effective system of monitoring noise exposure.	No requirement on mine operator.	Mine operator required to conduct periodic monitoring.
Notification of exposure	Operator must notify miner of certain exposures	Not required	Not required.
Dual Threshold (lowest sound level counted).	85 dBA for action level and 90 dBA for PEL	90 dBA for PEL	90 dBA for PEL.
Exchange rate	5 dB	5 dB	5 dB.
Training	Specific training requirements	Part 48	Part 48.
Quiet period prior to audiometric examination.	14 hours for baseline audiogram and use of HP permitted.	N/A	N/A.
Standard Threshold shift	Average of 10 dB at 2000, 3000, and 4000 Hz in either ear.	N/A	N/A.
Reportable hearing loss	Average of 25 dB at 2000, 3000, and 4000 Hz in either ear.	Reporting required but level was undefined.	Reporting required but level was undefined.
Employee access to records	Available upon request	N/A	N/A.

Abbreviations: HP (hearing protector), dBA (decibel, A-weighted), PEL (permissible exposure limit); Hz (hertz), n/a (not applicable).

III. Paperwork Reduction Act of 1995

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), as implemented by OMB in regulations at 5 CFR part 1320. The Paperwork Reduction Act of 1995 (PRA 95) defines collection of information as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format.'' (44 U.S.C. 3502(3)(A)). Under PRA 95, no person may be required to respond to, or may be subjected to a penalty for failure to comply with, these information collection requirements until they have been approved and MSHA has announced the assigned OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. In accordance with § 1320.11(h) of the implementing regulations, OMB has 60 days from today's publication date in which to approve, disapprove, or instruct MSHA to make a change to the information collection requirements in this final rule.

Recordkeeping requirements in the final rule are found in §§ 62.110, 62.130, 62.170, 62.171, 62.172, 62.173, 62.174, 62.175, 62.180, and 62.190.

MSHA received comments both supporting and opposing the proposed information collection requirements. MSHA has reviewed these comments. Several commenters questioned MSHA's estimates of the paperwork burden reduction of the noise rule. Two commenters noted that the February 1984 Program Information Bulletin 84–1C ''eliminated virtually all paperwork requirements for operators'' and that the ''paperwork involves one letter and two 32 cent stamps per year per coal operator.'' The February 1984 Program Information Bulletin eliminated the requirement for the completion and submission to MSHA of a Coal Mine Noise Data Report Form when operator noise exposure surveys are found to be within compliance. The Program Information Bulletin retained the requirement that a written and signed statement (certification) be submitted to MSHA that the required surveys were made and that the surveys show compliance. The Program Information Bulletin did not drop the requirement for noise surveys to be conducted, exclude the requirement for supplemental noise surveys for exposures at or above the permissible exposure level (and a submission of them), or eliminate the requirement of

surveying all miners and retaining a record.

In addition, as MSHA stated in the proposal, there are labor and equipment costs related to performing the surveys twice a year, completing survey reports and certifications, doing calibration reports annually, and collecting a noise monitoring record for all coal miners. Under PRA 95, all activities related to the generation of a paperwork item must be considered when calculating the costs and burden of paperwork tasks. For these reasons, MSHA's estimates in the final rule are consistent with the requirements of PRA 95.

Other commenters stated that they will still have to conduct surveys, retain survey records, conduct training and audiometric testing, and implement engineering and administrative controls to demonstrate compliance. The existing standards require coal mine operators to perform semiannual monitoring for each miner. Under the final rule, mine operators must establish a system of monitoring that evaluates each miner's noise exposure sufficiently to determine continuing compliance with this part. However, under the final rule mine operators may use their own monitoring records as well as the Agency's data from inspector sampling to determine compliance.

Some commenters stated that the performance-based system of monitoring may result in increased monitoring. MSHA anticipates that a number of mine operators will use some form of representative sampling within job classes or work areas to minimize costs related to dose determination. In addition, large operators who use the same equipment on more than one shift may conduct monitoring on a single shift to determine miner exposures, provided that the circumstances are similar.

The Agency published a supplemental proposal that would give affected miners and their representatives the right to observe operator monitoring. MSHA estimated that the time required for observation of monitoring would take about 2 hours annually at small mines and about 5 hours annually at large mines. Several commenters questioned the Agency's estimates. One commenter questioned the Agency's estimate of 5 hours for a large mine. The commenter believed that for a mine which employed 1,500 workers, 12,000 hours will be spent on noise monitoring (1,500 workers * an 8 hour workday). Under the final rule, mine operators will need to determine miners' exposure; this may be achieved in a number of ways including the use of existing monitoring records (particularly for coal mine operators), review of MSHA sampling records, or by the use of representative sampling. Since mine operators are not specifically required by the final rule to monitor each employee but may use a more flexible approach, MSHA anticipates that its estimates of an average of 2 hours and 5 hours annually at small and large mines respectively (reflecting 30 minute monitoring for each of four miners in a small mine and ten miners in a large mine) are reasonable.

Another commenter questioned if there will be an observation time limit and also believed that MSHA's estimate of 5 hours annually was too low. Also, a commenter questioned MSHA's estimates of lost production, the length of time needed for observation, and MSHA's average time estimates per small mine and per large mine. A commenter also believed that the total estimated annual information collection burden was low. With the exception of the one commenter who provided the estimate of 12,000 hours annually to observe monitoring, none provided data to support their statements.

At the public hearing, several commenters testified that they considered MSHA's time estimates and photocopy cost estimates high. In particular, they believed that the time to give instructions to the secretary were excessive. Further, they stated MSHA's estimates for the length of time to perform typing and posting were too high. Other commenters stated that the bulk of the paperwork would be completed by safety professionals and industrial hygienists as opposed to clerical workers. Based upon a review of all the comments and MSHA's experience, the Agency believes the estimates in the final rule are reasonable.

The proposed rule would have required mine operators to obtain from the physician, audiologist, or qualified technician who conducts an audiometric test a certification that each test was conducted in accordance with scientifically validated procedures. Commenters stated that requiring mine operators to obtain a certification for each individual audiogram was unduly burdensome. The Agency agrees and the proposed certification requirement has not been adopted in the final rule. Under the final rule, evidence is simply required that the audiograms were conducted in accordance with scientifically validated procedures. For example, the evidence may consist of a single statement from the audiometric test provider or a single billing record that indicates that required procedures were followed for a number of audiograms.

The proposed rule would have required mine operators to provide miners with a copy of all their records relating to this standard when those miners terminate employment. Commenters stated that this was an unnecessary requirement which generated too much paper and that miners may not even want a copy of the records. In response, the final rule requires mine operators to provide copies of records to a miner if the miner requests such records.

Numerous commenters stated that records should not have to be retained at the mine site. MSHA agrees and the final rule provides that records are not required to be maintained at the mine site, and therefore can be electronically filed in a central location, so long as the records are made available to the authorized representative of the Secretary upon request within a reasonable time, in most cases one day.

Although the final rule does not require backing up the data, some means are necessary to ensure that electronically stored information is not compromised or lost. MSHA encourages mine operators who store records electronically to provide a mechanism that will allow the continued storage and retrieval of records in the year 2000.

MSHA solicited comment on what actions would be required, if any, to facilitate the maintenance of records in electronic form by those mine operators who desire to do so, while ensuring access in accordance with these requirements. The Agency received several comments supporting electronic storage of records, but no specifics regarding actions required to facilitate the maintenance of the records in electronic form. In revising the requirements from those that appeared in the proposed rule, MSHA has evaluated the necessity and usefulness of the collection of information; reevaluated MSHA's estimate of the information collection burden, including the validity of the underlying methodology and assumptions; and minimized the information collection burden on respondents to the greatest extent possible. The following charts provide, by section, the paperwork requirements for Year 1 and for each succeeding year, respectively.

TABLE 1.—SUMMARY OF NET INFORMATION COLLECTION BURDEN HOURS IN YEAR 1

Section	Paperwork requirements and associated tasks	Coal mines		M/NM mines		Total
		Small	Large	Small	Large	
62.110 to 62.130	Evaluate noise exposure; notify miners, prepare, post, and distribute administrative controls; and permit observation of monitoring.	(7,988)	(50,666)	14,605	12,579	(31,471)
62.170	Perform audiograms; and notify miners to appear for testing and of need to avoid high noise levels.	940	4,181	3,577	5,271	13,969
62.171	Compile an audiometric test record; and obtain evidence.	1,021	4,616	3,882	5,820	15,339
62.172	Provide information and audiometric test record; and perform audiometric retests.	1,413	4,374	5,474	5,513	16,774
62.173	Perform otological evaluations; and provide information and notice.	7	27	29	34	98
62.174	Prepare a retraining certification; and review effectiveness of engineering and administrative controls.	105	334	407	420	1,266
62.175	Inform miners of test results and tSTS.	1,038	4,623	3,950	5,829	15,440
62.180	Prepare and file a training certificate.	1,280	4,165	4,957	5,180	15,581
62.190	Provide access to, and transfer, records	244	303	1,027	915	2,489
Total		(1,941)	(28,045)	37,909	41,561	49,484

TABLE 2.—SUMMARY OF NET INFORMATION COLLECTION BURDEN HOURS FOR AFTER YEAR 1

Section	Paperwork requirements and associated tasks	Coal mines		M/NM mines		Total
		Small	Large	Small	Large	
62.110 to 62.130	Evaluate noise exposure; notify miners, prepare, post, and distribute administrative controls; and permit observation of monitoring.	(8,532)	(48,006)	6,595	3,567	(46,376)
62.171	Compile an audiometric test record; and obtain evidence.	153	692	582	873	2,301
62.172	Provide information and audiometric test record; and perform audiometric retests.	212	656	821	827	2,516
62.173	Perform otological evaluations; and provide information and notice.	1	4	4	5	15
62.174	Prepare a retraining certification; and review effectiveness of engineering and administrative controls.	16	53	62	67	198
62.175	Inform miners of test results and STS	156	694	593	874	2,316
Total		(7,994)	(45,907)	8,658	6,213	(39,029)

Executive Order 12866 and Regulatory Flexibility Analysis

In accordance with Executive Order 12866, MSHA has prepared a final analysis of the estimated costs and benefits associated with the revisions of the noise standards for coal and metal and nonmetal mines.

The final Regulatory Economic Analysis containing this analysis is available from MSHA. The final rule will cost approximately $8.7 million annually and will prevent or contribute to the prevention of approximately 595 hearing impairment cases annually. The benefits are expressed in terms of cases of hearing impairment that can be avoided and have not been monetized. Although the Agency has attempted to quantify the benefits, it believes that monetization of these benefits would be difficult and inappropriate.

Based upon the economic analysis, MSHA has determined that this rule is not an economically significant regulatory action pursuant to section 3(f)(1) of Executive Order 12866. The Agency does consider this rulemaking significant under section 3(f)(4) of the Executive Order for other reasons, and has so designated the rule in its annual agenda.

Regulatory Flexibility Certification

In accordance with section 605 of the Regulatory Flexibility Act, the Mine Safety and Health Administration certifies that the final noise rule does not have a significant economic impact on a substantial number of small entities. Traditionally, MSHA considers small mines to be mines with fewer than 20 employees. Under the Regulatory Flexibility Act, MSHA must use the SBA definition for a small mine of 500 employees or fewer or, after consultation with the SBA Office of Advocacy, establish an alternative definition in the **Federal Register** for notice and comment. The alternative definition could be the Agency's traditional definition of ''fewer than 20 miners'' or some other definition. As reflected in the certification, MSHA analyzed the costs of this final rule for small and large mines using both the traditional Agency definition and SBA's definition, as required by the Regulatory Flexibility Act, of a small mine. No small governmental jurisdictions or

nonprofit organizations are adversely affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the Regulatory Flexibility Act, MSHA must include in the final rule a factual basis for this certification. The Agency must also publish the regulatory flexibility certification statement in the **Federal Register**, along with the factual basis, followed by an opportunity for the public to comment. The Agency has consulted with the Small Business Administration (SBA) Office of Advocacy and believes that this analysis provides a reasonable basis for the certification in this case.

In the proposal, MSHA specifically solicited comments on the Agency's regulatory flexibility certification statement, including cost estimates and data sources. To facilitate public participation in the rulemaking process, MSHA mailed a copy of the proposal and will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to every mine operator and miners' representative.

Factual Basis for Certification

General Approach

The Agency's analysis of impacts on ''small entities'' and ''small mines'' begins with a ''screening'' analysis. The screening compares the estimated compliance costs of the final rule for small mine operators in the affected sector to the estimated revenues for that sector. When estimated compliance costs are less than 1 percent of estimated revenues (for the size categories considered), the Agency believes it is generally appropriate to conclude that there is no significant impact on a substantial number of small entities. When estimated compliance costs approach or exceed 1 percent of revenue, it tends to indicate that further analysis may be warranted.

Derivation of Costs and Revenues

The Agency performed its analysis separately for two groups of mines: the coal mining sector as a whole, and the metal and nonmetal mining sector as a whole. Based on a review of available sources of public data on the mining industry, the Agency believes that a quantitative analysis of the impacts on various mining subsectors (that is, beyond the 4-digit SIC level) is not feasible. The Agency requested comments, however, on whether there are special circumstances that warrant separate quantification of the impact of this final rule on any mining subsector and information on how it might readily obtain the data necessary to conduct such a quantitative analysis. The Agency is fully cognizant of the diversity of mining operations in each sector, and has applied that knowledge as it developed the final rule.

In determining revenues for coal mines, MSHA multiplied coal production data (in tons) for mines in specific size categories (reported to MSHA quarterly) by $18.14 per ton, Department of Energy (1997). For metal and nonmetal mines, the Agency estimated revenues for specific mine size categories as the proportionate share of these mines' contribution to the Gross National Product, Department of Interior (1998).

Results of Screening Analysis

As shown in the following chart, for coal mine operators with fewer than 20 employees, the estimated yearly cost of the final rule is $400 per mine operator, and estimated yearly costs as a percentage of revenues are 0.08 percent. As shown in the next chart, for coal mine operators with 500 or fewer employees, the estimated yearly savings from the final rule are $634 per mine operator. The savings are due to the elimination of existing coal industry requirements for performing and recording semiannual surveys and other related surveys and reports.

TABLE 1.—THE IMPACT OF FINAL RULE ON THE COAL MINING INDUSTRY*

Mine type	Estimated costs	Estimated revenue	Estimated cost per mine	Cost as percent of revenue
Small (<20)	$603,941	$767,307,869	$400	0.08
Large (≥20)	763,112	18,964,691,818	727	0.00

*Source: Preliminary Data 1997 from CM441 and Department of Energy/Energy Information Agency. Annual Energy Review 1997. POE/EIA–038497. July 1998. P. 187.

TABLE 2.—THE IMPACT OF FINAL RULE ON THE COAL MINING INDUSTRY*

Mine type	Estimated costs	Estimated revenue	Estimated cost per mine	Cost as percent of revenue
Small (≤500)	$1,296,461	$19,038,974,646	$508	0.01
Large (<500)	70,592	693,025,041	6,403	0.01

*Source: Preliminary Data 1997 from CM441 and Department of Energy/Energy Information Agency. Annual Energy Review 1997. POE/EIA–038497. July 1998, P. 187.

As shown in the following chart, for metal/nonmetal mines with fewer than 20 employees, the estimated yearly cost of the final rule is $414 per mine operator, and estimated costs as a percentage of revenues are 0.04 percent. As shown in the next chart, for metal/nonmetal mine operators with 500 or fewer employees, the estimated yearly cost is $617 per mine operator, and estimated costs as a percentage of revenues are 0.02 percent.

TABLE 3.—THE IMPACT OF FINAL RULE ON THE METAL/NONMETAL MINING INDUSTRY *

Mine type	Mine costs	Estimated revenue	Estimated Cost per mine	Cost as percent of revenue
Small (<20)	$4,321,282	$10,651,022,009	$460	0.04
Large (≥20)	3,056,036	27,348,977,991	1,945	0.01

* Source: Preliminary Data 1997 from CM441 and Department of Interior, Bureau of Mines, Mineral.

TABLE 4.—DISTRIBUTION OF MINE OPERATIONS AND EMPLOYMENT BY MINE TYPE AND SIZE INCLUDING INDEPENDENT CONTRACTORS AND CONTRACTOR WORKERS POTENTIALLY AFFECTED BY THE FINAL RULE *

Mine Size (No. of employees)	Coal			Metal/nonmetal		
	No. of mines	No. of miners	Miners per mine	No. of mines	No. of miners	Miners per mine
Small (<20)	2,401	14,347	5.97	10,098	56,859	5.63
Large (≥20)	1,133	82,142	72.48	1,666	122,378	73.45
Total	3,535	96,489	27.30	11,764	179,238	15.24

* Source: Table 2 and Table 3. Office workers are not included in these employment figures.

In all cases, the cost of complying with the final rule is less than one percent of revenues, well below the level suggesting that the final rule might have a significant impact on a substantial number of small entities. Accordingly, MSHA has certified that there is no such impact on small coal mines or small metal/nonmetal mines.

Regulatory Alternatives Considered

The limited impacts on small mines, regardless of size definition, reflect decisions by MSHA not to include more costly regulatory alternatives. In considering regulatory alternatives for small mines, MSHA must observe the requirements of its authorizing statute. Section 101(a)(6)(A) of the Mine Act requires the Secretary to set standards which most adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health over his/her working lifetime. In addition, the Mine Act requires that the Secretary, when promulgating mandatory standards pertaining to toxic materials or harmful physical agents, consider other factors, such as the latest scientific data in the field, the feasibility of the standard, and experience gained under the Act and other health and safety laws. Thus, the Mine Act requires that the Secretary, in promulgating a standard, attain the highest degree of health and safety protection for the miner, based on the ''best available evidence,'' with feasibility as a consideration.

As a result of this statutory requirement, MSHA considered two alternatives that would have significantly increased costs for small mine operators lowering the permissible exposure level to a TWA_8 of 85 dBA, and lowering the exchange rate to 3 dB. In both cases, the scientific evidence in favor of these approaches was strong, but commenters offered divergent views on the alternatives. In both cases, for the purpose of this final rule, MSHA has concluded that it would not be feasible for the mining industry to accomplish these more protective approaches. The impact of these approaches on small mine operators was an important consideration in this regard.

Further, MSHA proposed using an 80-dBA threshold for determining the permissible exposure level. If the Agency had done this, the number of mines with exposure levels at or above the permissible exposure level would have increased substantially. Accordingly, with more mines above this level, the total cost of compliance would have been higher, including penalties. Many commenters opposed the change in the threshold. They believed that the current 90-dBA threshold was sufficient for achieving adequate health protection for miners and was compatible with OSHA's noise standard. Additionally, as discussed in more detail later in the preamble, MSHA did not intend to change the permissible exposure level for noise. A change in the threshold would have had this effect. For these reasons, the final rule includes the existing threshold for the permissible exposure level.

Under the proposal, the mine operator would have had to make certain that miners exposed above the permissible exposure level take the audiometric examination. Several commenters expressed concerns about the enforceability of this provision. MSHA considered these concerns, and under the final rule, audiometric testing is voluntary. In this regard, it is also compatible with OSHA's noise standard.

In addition, under the proposal, mine operators would not have been allowed to use hearing protectors as a substitute for the 14-hour quiet period prior to an audiogram. Mine operators had stated that they could not, without substantial burden to production and management, meet this requirement. Some noted that in cases in which the audiometric testing cannot be scheduled on a day after a non-work day, the only way to ensure a 14-hour quiet period was to pay the miner not to work. Under the final rule, mine operators may use hearing protectors as a substitute for the quiet period. Again, this is compatible with OSHA's noise standard.

Paperwork Impact

In accordance with the Regulatory Flexibility Act and the Paperwork Reduction Act of 1995, MSHA has analyzed the paperwork burden for both metal and nonmetal and coal mines. While the final rule results in a net paperwork burden decrease for large coal mines in year one and both small and large coal mines after year one, there will be an increase in paperwork burden hours for small coal mines in year one and in metal and nonmetal mines' year one and every year thereafter.

For small coal mines with fewer than 20 miners the final rule will result in an increase of about 485 paperwork burden hours in year one. After year one there will be a savings of 4,438 paperwork burden hours for small coal mines. For large coal mines with 20 or more miners, the final rule will result in a decrease of about 10,405 paperwork

burden hours in year one, and a savings of 28,498 each year thereafter. For metal and nonmetal mines, the final rule will result in an increase of paperwork burden hours for both small and large mines. There will be an increase of 33,955 paperwork burden hours for small metal and nonmetal mines and increase of 38,183 paperwork burden hours for large metal and nonmetal mines in year one. After year one, there will be an increase of 15,526 paperwork burden hours per year for small metal and nonmetal mines, and an increase of 14,331 per year for large.

Although the substantial increases in paperwork burden hours result from §§ 62.175 and 62.180 for coal mines, these will be offset by the net savings of §§ 62.110–62.130, which eliminate current requirements for biannual noise surveys and other miscellaneous reports and surveys in that sector. However, for metal and nonmetal mines there will be an increase in paperwork burden hours associated with complying with the final rule.

As required by the Paperwork Reduction Act of 1995, MSHA has included in its paperwork burden estimates the time needed to perform tasks associated with information collection. For example, the final rule requires a mine operator to notify a miner if the miner's noise exposure equals or exceeds the action level. In order to determine if notification is necessary, the mine operator must perform a dose determination. MSHA has included the time needed for dose determination in its burden estimate, as required under PRA 95.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

In accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the Regulatory Flexibility Act, MSHA carefully considered all of the proposed requirements, in addition to alternatives to the proposal, to ensure that the final rule would provide the least burdensome impact necessary to promote miner health. MSHA believes that it has complied with the SBREFA amendments.

The preamble to the proposed rule included a full discussion of MSHA's preliminary conclusions about regulatory alternatives. The public was invited to suggest additional alternatives for compliance.

MSHA is taking several actions to minimize the compliance burden on small mines. The effective date of the final rule will be a full year after its publication, to provide adequate time for small mines to achieve compliance and for MSHA to brief the mining community about the rule's requirements. Also, as stated previously, MSHA will mail a copy of the final rule to every mine operator, which benefits small mine operators. The Agency has committed itself to issuance of a compliance guide for all mines; MSHA believes that compliance workshops or other approaches will be valuable and the Agency will hold such workshops if requested.

For this rulemaking's Regulatory Flexibility Analysis, the Agency is using its traditional definition of ''small mine'' as a mine with fewer than 20 employees, in addition to the SBA's definition of operations with fewer than 500 employees, as required by the Regulatory Flexibility Act. For purposes of this final rule, MSHA has continued its past practice of using ''under 20 miners'' as the appropriate point of reference, in addition to SBA's definition. Reviewers will note that the paperwork and cost discussions continue to refer to the impacts on ''small'' mines with fewer than 20 employees. The Agency has not established a definition of ''small entity'' for purposes of the final rule. Based on this analysis, MSHA concludes that whatever definition of ''small entity'' is eventually selected, the final noise rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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

Environmental Assessment

The final noise rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council of Environmental Quality (CEQ) (40 CFR part 1500) and the Department of Labor's NEPA compliance procedures (29 CFR part 11). In the **Federal Register** of May 26, 1998 (63 FR 28496), MSHA made a preliminary determination that the proposed noise rule was of a type that does not have a significant impact on the human environment. In response, one comment was received by the Agency. The commenter expressed a concern that the Agency had not prepared an environmental assessment in accordance with NEPA, the CEQ and the Department's procedural regulations. MSHA's preliminary determination was based on its Regulatory Impact Analysis which explained the costs and benefits of the proposed rule. MSHA has complied with the requirements of the NEPA, including the Department of Labor's compliance procedures and the regulations of the Council on Environmental Quality. The Agency has not received any new information or comments that would affect its previous determination. As a result of the Agency's review of the final noise rule, MSHA has concluded that the rule will not have significant environmental impacts, and therefore neither an environmental assessment nor an environmental impact statement is required. In addition, MSHA believes that the final rule will indirectly aid the environment since many of the engineering controls which control noise, such as mufflers and curtains, also aid in controlling environmental pollutants.

Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

MSHA certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments. Further, MSHA provided the public, including Indian tribal governments which operated mines, the opportunity to comment on the proposal and to participate in the public hearing process. No Indian tribal government applied for a waiver or commented on the proposal.

Executive Order 12612 Federalism

Executive Order 12612, regarding federalism, requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Because this final rule does not limit state policy options, it complies with the principles of federalism and with Executive Order 12612.

Unfunded Mandates Reform Act of 1995

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of

more than $100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this final rule does not significantly or uniquely affect small governments.

Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal agencies to make this same determination with respect to regulatory actions.

Analysis

Based on the analysis in the Agency's final Regulatory Economic Analysis, the annualized cost of this final rule is approximately $8.9 million. Accordingly, there is no need for further analysis under § 202 of the Unfunded Mandates Reform Act.

MSHA has concluded that small governmental entities are not significantly or uniquely impacted by the final regulation. The final rule will impact approximately 15,299 coal and metal and nonmetal mining operations; however, increased costs will be incurred only by those operations (approximately 10,476 mines) where noise exposures exceed the allowable limits. MSHA estimates that approximately 187 sand and gravel or crushed stone operations are run by state, local, or tribal governments and will be impacted by this rule.

When MSHA issued the proposed rule, the Agency affirmatively sought input of any state, local, and tribal government which may be affected by the noise rulemaking. This included state and local governmental entities who operate sand and gravel mines in the construction and repair of highways and roads. MSHA mailed a copy of the proposed rule to these entities. No state, local or tribal government entity commented on the proposed rule. When the final rule is published, MSHA will mail a copy to all 187 entities.

IV. Miscellaneous

Permissible Exposure Level

The final rule affirms MSHA's initial determination, set out in the proposal, that there is a significant risk for miners of material impairment from noise exposures at or above an 8-hour time-weighted average of 85 dBA. However, the final rule also comports with MSHA's initial conclusion that it would not be either technologically or economically feasible at this time for the mining industry to implement a reduced permissible exposure level for noise, including a reduction in the exchange rate. For these reasons the final rule does not reduce the permissible exposure level, but it does require mine operators to take a number of other actions that will substantially reduce miners' risk of occupational noise-induced hearing loss.

MSHA will continue to examine closely the feasibility of a reduction in the permissible exposure level for miners' noise exposure. This will include, but is not limited to, assessment of the availability and suitability of equipment retrofits for noise control, evaluation of the state of existing noise control technology appropriate for mining applications, and the availability of alternative, and less noisy, equipment for various mining tasks. MSHA intends to work closely with all segments of the mining community in its continuing assessment of feasibility.

NIOSH Criteria Document

In March 1996, the National Institute for Occupational Safety and Health (NIOSH) released for peer review a draft Criteria Document for Occupational Noise Exposure, which was intended to update an earlier NIOSH Criteria Document for Noise that had been issued in 1972. MSHA summarized the recommendations of the draft Criteria Document in the preamble to the proposed rule (61 FR 66369–66370), and considered the draft Criteria Document recommendations, as well as comments that addressed the draft Criteria Document, in developing this final rule.

In June 1998 NIOSH issued the final Criteria Document for Occupational Noise Exposure, which in large part adopts the recommendations of the 1996 draft Criteria Document, which, as mentioned above, were considered as part of this rulemaking. However, the final Criteria Document does include several recommendations which differ from recommendations in the 1996 draft Criteria Document. The main differences between the draft and the final Criteria Documents are as follows:

1. Action level. In the draft document, NIOSH proposed what was essentially an ''action level'' that would trigger establishment of a Hearing Loss Prevention Program. The ''action level'' would have been an 8-hour TWA of 85 dBA. The final Criteria Document does not adopt the ''action level'' concept, and instead would trigger establishment of a Hearing Loss Prevention Program at the recommended exposure limit of an 85 dBA TWA_8. Under MSHA's final rule, a miner's noise exposure at 85 dBA TWA_8 requires enrollment of the miner in a Hearing Conservation Program.

2. Ceiling Level. The NIOSH draft Criteria Document recommended a ceiling at a 115 dBA sound pressure level. The final Criteria Document recommends a 140 dBA sound pressure level ceiling limit for continuous, varying, intermittent, or impulsive noise.

3. Dual Hearing Protection Level. The draft Criteria Document did not make a recommendation for such a level. However, the final Criteria Document recommends the use of dual hearing protection at exposures exceeding a TWA_8 of 100 dBA.

4. Quiet Period. The draft Criteria Document recommended a 14-hour quiet period prior to a baseline audiogram, and would not permit the use of hearing protectors as a substitute. The final Criteria Document recommends a quiet period of 12 hours, and still would not permit the use of hearing protectors in lieu of the quiet period.

Rule Format

In the preamble to the proposed rule MSHA solicited comments on the appropriate format for the final rule, providing examples for commenters of alternate approaches. There was no clear consensus among commenters to the proposal that the traditional format of MSHA's regulations should be changed. As a result, the final rule adopts the format of existing MSHA regulations.

Unlike the proposal the final rule does not include a question and answer section. Instead, after publication of the final rule, MSHA will develop and issue a compliance guide for the mining community to facilitate its understanding of and compliance with the requirements of the final rule. Additionally, MSHA is receptive to submission by the mining community of suggestions for issues that should be addressed in the compliance guide.

V. Material Impairment

Section 101(a)(6) of the Federal Mine Safety and Health Act of 1977 (Mine Act) provides that, in dealing with toxic materials or harmful physical agents, standards set by the Secretary shall:

* * * most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

MSHA has determined that there is a significant risk of material impairment of health and functional capacity to miners from exposure to workplace noise despite the existing noise standards, and the Agency's rulemaking evidence supports this. MSHA anticipates that the final rule will reduce, by approximately two-thirds, the number of miners who will suffer a material impairment due to exposure to

occupational noise under the existing regulations.

MSHA's conclusion that there is a significant risk of material impairment of health for workers exposed over their working lifetimes to sound levels of 85 dBA is based on the Agency's definition of material impairment, which is referred to in this preamble as the OSHA/NIOSH–72 definition. Under the OSHA/NIOSH–72 definition, the excess risk of a hearing impairment from occupational noise exposure is 15% or one-hundred fifty-in-a-thousand miners at an 85 dBA TWA_8 exposure for a working lifetime. The Supreme Court has indicated, in discussing significant risk in the context of litigation under section 6(f) of the OSH Act, that OSHA is free to use conservative assumptions in interpreting data so long as they are supported by reputable scientific concepts, and that a one-in-a-thousand risk is significant. *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607, 655 (1980) (the Benzene Case). If the Mine Act were to impose the same risk-finding requirement as the OSH Act, MSHA's determination of a significant risk of material impairment of health falls well within the Supreme Court's direction to OSHA in the Benzene Case.

Exposure to hazardous sound levels results in noise-induced hearing loss. Noise-induced hearing loss is often described in terms of the relationship between the sound level to which a person is exposed and the duration of the exposure. Exposures to noise at sound levels equal to or greater than the 8-hour average sound level of 85 dBA have been shown to lead to hearing loss, which can be temporary or permanent.

Noise-induced hearing loss causes difficulty in hearing and understanding speech. People suffering from significant noise-induced hearing loss require even nearby persons to speak loudly and clearly to be understood, and they are often frustrated by missing vital information. Also, background noise affects the person's ability to distinguish meaningful sounds from ambient noise. Little benefit can be derived from the use of a hearing aid because it amplifies sound indiscriminately, without increasing clarity, decreasing distortion, or screening out unwanted sounds. Noise also produces secondary, non-auditory effects.

Although the secondary effects of noise-induced hearing loss are more difficult to identify, document, and quantify than the hearing loss itself, recent laboratory and field studies have found an association between noise and cardiovascular problems and other illnesses such as hypertension. Studies also suggest that holding exposure below a time-weighted average of 85 dBA will significantly improve both psychological and physiological stress reactions.

Safety risks at the workplace may arise as a result of noise-induced hearing loss. Workers suffering from noise-induced hearing loss may not hear safety signals because of reduced hearing sensitivity to higher frequencies. In addition, noise-induced hearing loss results in the loss of the ability to distinguish between many pairs of consonants, which makes speech incomprehensible. As a result, miners suffering from noise-induced hearing loss may have trouble understanding directions or warnings given by their supervisors or co-workers.

Definition of Material Impairment

MSHA has determined that a 25 dB hearing level averaged over 1000, 2000, and 3000 Hz in both ears is the most appropriate gauge of a miner's risk of developing significant noise-induced hearing loss. MSHA therefore considers such a loss to constitute a material impairment in hearing. MSHA's definition of material impairment is based on one developed in 1972 by NIOSH and subsequently adopted by OSHA in its noise standard for general industry, referred to below as the OSHA/NIOSH–72 definition. (As noted by a commenter, the preamble to the proposed rule incorrectly stated that the OSHA/NIOSH–72 definition included the phrase ''in either ear.'' This mistake is corrected here and in the final rule.) In addition, as discussed elsewhere in this preamble, MSHA notes that it has not adopted the revised definition of material impairment set forth in the final NIOSH Criteria Document issued in June 1998. Throughout this preamble, therefore, MSHA will continue to refer to the definition of material impairment developed by NIOSH in 1972.

In nearly all studies of risk, material impairment from exposure to noise is defined as a 25-dB hearing level. Hearing level is the deviation in hearing sensitivity from audiometric zero. Positive values indicate poorer hearing sensitivity than audiometric zero, while negative values indicate better hearing. Audiometric zero is the lowest sound pressure level that the average, young adult with normal hearing can hear. Because of the widespread use of this definition in the scientific community, MSHA has used it in the final rule.

Most definitions of hearing impairment are based solely on pure tone audiometry, in which an audiometer is used to measure an individual's threshold hearing level the lowest level of discrete frequency tones that he or she can hear. The test procedures for pure tone audiometry are relatively simple, widely used, and standardized. Although there is little debate in the scientific community about the usefulness of pure tone audiometry in assessing hearing loss, there is some disagreement about the range of audiometric frequencies that should be used in determining hearing loss.

When OSHA initially published its noise standard establishing noise exposure limits for employees, most medical professionals used the 1959 criteria developed by the American Academy of Ophthalmology and Otolaryngology (AAOO), a subgroup of the American Medical Association (AMA). This definition (AAOO 1959) of hearing impairment is a hearing level exceeding 25 dB, referenced to audiometric zero, averaged over 500, 1000, and 2000 Hz in either ear. The American Academy of Otolaryngology Committee on Hearing and Equilibrium and the American Council of Otolaryngology Committee on the Medical Aspects of Noise (AAO–HNS) modified the 1959 criteria in 1979 by adding the hearing level at 3000 Hz to the 500, 1000, and 2000 Hz frequencies. The AAOO 1959 and AAO–HNS 1979 definitions cover all types of hearing loss and were designed for hearing speech under relatively quiet conditions. The NIOSH–72 definition includes the higher frequencies, which are crucial to the comprehension of speech under everyday conditions.

In its draft 1996 Criteria Document for occupational noise exposure, NIOSH indicated that it was considering a new definition for material impairment of a 25 dB or greater hearing loss at 1000, 2000, 3000, and 4000 Hz in both ears. This definition was a recommendation of a Task Force to the American Speech-Language-Hearing Association (ASHA) in 1981. In 1997, NIOSH conducted a reanalysis of the NIOSH-Occupational Noise and Hearing Survey data and reevaluated the excess risk of material hearing impairment incorporating the 4000 hertz audiometric frequency in the definition of material impairment. (Excess risk is defined by NIOSH as the percentage with material impairment of hearing in an occupational noise exposed population after subtracting the percentage who would normally incur such impairment from other causes in a population not exposed to occupational noise.) In 1998, NIOSH published the results of this reanalysis in its final Criteria Document. The excess risk of developing occupational noise induced

hearing loss under the reassessment is 8%. The excess risk of developing occupational noise induced hearing loss under the 1972 NIOSH definition of material impairment is 15% for average noise exposure level of 85 dBA. The final Criteria Document recommends that the reanalysis reaffirms support for the 85 dBA NIOSH recommended exposure limit.

The final rule does not adopt the revised NIOSH definition for hearing impairment. Several commenters noted that this definition has not been adopted by the scientific community, and no state workers' compensation agency awards compensation for hearing impairment based upon the current NIOSH hearing impairment criterion. Despite the fact that noise-induced hearing loss usually first becomes detectable at 4000 Hz, MSHA finds that the scientific evidence does not, as yet, support including 4000 Hz in the frequencies used for calculating hearing impairment. Inclusion of test frequencies above 2000 Hz, however, is necessary to show the effect of noise below 90 dBA on hearing, so MSHA continues to include the 3000 Hz frequency. Several commenters suggested that MSHA use the AAO–HNS 1979 definition of material impairment. There were relatively few commenters in favor of using the AAO–HNS 1979 definition. MSHA has excluded the 500 Hz frequency from the definition of hearing impairment because it is not as critical for understanding speech and is least affected by noise. MSHA chose the hearing levels at 1000, 2000, and 3000 Hz on which to base its definition of material impairment because high frequency hearing is critically important to the understanding of speech, which often takes place in noisy conditions. The Agency's determination is consistent with OSHA's reasoning for its noise standard, and many comments and studies cited support this approach.

Risk of Impairment

The risk of developing a material impairment becomes significant over a working lifetime when workplace exposure to noise exceeds sound levels of 85 dBA. Data reviewed by the Agency indicate that lowering exposure from 90 dBA to 85 dBA does not eliminate the risk, it reduces the risk by approximately half.

Typically, noise-induced hearing loss occurs first at 4000 Hz and then progresses into the lower and higher frequencies. MSHA notes that because noise does not affect hearing sensitivity equally across all frequencies, the population defined as impaired will differ according to the frequencies that are used in the measurement criteria. For example, AAOO 1959 is weighted toward the lower frequencies, because it was developed to determine an individual's ability to communicate under quiet conditions. AAO–HNS, which includes 3000 Hz, is weighted toward the higher frequencies. Because OSHA/NIOSH–72 is weighted even more towards the higher frequencies due to the elimination of the hearing level at 500 Hz, the population of those impaired due to noise exposure will be greater than under the AAOO 1959 and AAO–HNS 1979 definition.

MSHA has found that there is no reliable mathematical relationship among the three ways of assessing hearing impairment, so that direct comparisons of their results are not possible. That is, it is not possible to accurately predict the values computed using one definition from values computed using either of the other two methods. In addition, most of the raw data that would allow conversion from one definition to another are no longer available. Nonetheless, the results from all three approaches tend to demonstrate the same result.

Measuring Risk

MSHA could not determine an individual miner's risk from exposure to particular levels of noise because at any given noise exposure, some miners will suffer harm long before others, and a miner's susceptibility cannot be measured in advance of exposure. However, as MSHA noted in the proposal, risks can be determined for entire populations. The probability of acquiring a material impairment of hearing in a given population can be determined by extrapolating from data obtained from a test population exposed to the same sound levels. Three methods are generally used to express this population risk:

(1) The hearing level of the exposed population;

(2) The percentage of an exposed population meeting the selected criteria; and

(3) The percentage of an exposed population meeting the selected criteria minus the percentage of a non-noise exposed population meeting the same criteria, provided both populations are similar, apart from their occupational noise exposures.

MSHA has determined that the third method, commonly known as ''excess risk,'' provides the most accurate picture of the risk of hearing loss resulting from occupational noise exposure. OSHA also used this method in quantifying the degree of risk in the preamble to its noise standard (46 FR 9739, 1983). This method allows the differentiation of the population expected to develop a hearing impairment due to occupational noise exposure from the population expected to develop an impairment from non-occupational causes, such as aging or medical problems.

Although studies of hearing loss in the rulemaking record consistently indicate that exposure to increased sound levels or increased duration results in increased hearing loss, the reported risk estimates of occupational noise-induced hearing loss vary considerably from one study to another. The variation is due to three factors:

(1) The definition of ''material impairment'' used (discussed above);

(2) The screening of the control (non-noise-exposed) group; and

(3) The sound level below which material impairment from noise exposure is not expected to occur.

In some of the data used by MSHA, researchers did not screen their study and control populations, while in others they used a variety of screening criteria. Theoretically, screening does not have a significant impact on the magnitude of occupational noise-induced hearing loss experienced by given populations as long as the same criteria are used to screen both the noise-exposed and the non-noise-exposed populations being compared. However, failure to take into account any non-occupational noise exposure, loss of hearing sensitivity due to aging, or both, can have a profound effect when considering whether the subjects have exceeded an established definition of material impairment. For example, if both the exposed and control populations are screened to eliminate persons with a history of military exposure, use of medicines harmful to the ear, noisy hobbies, and conductive hearing loss from acoustic trauma or illness, the excess risk would be significantly different from that determined using unscreened populations.

The studies used by MSHA for the final as well as the proposed rule generally assumed exposures below 80 dBA to be nonhazardous. Although a few researchers—Kryter (1970) and Ambasankaran et al. (1981)—have reported hearing loss from exposure to sound levels below 80 dBA, most scientists believe that the risk of developing a material impairment of hearing from exposure to such low levels over a working lifetime is negligible. Accordingly, almost all noise risk studies consider the population exposed only to average levels of noise below 80 dBA as a ''non-noise exposed''

control group. Thus, 80 dBA has become the lower sound level against which other noise exposures are compared to determine the ''excess risk.'' This position was adopted by OSHA in its evaluation of the risk of hearing loss for its existing standard on hearing conservation.

Review of Study Data

As noted in the preamble to the proposed rule, Table 1 is derived from the preamble to OSHA's noise standard (46 FR 4084). It displays the percentage of the population expected to develop a hearing impairment meeting the AAOO 1959 definition if exposed to the specified sound levels over a working lifetime of 40 years. This is a compilation of data developed by the U.S. Environmental Protection Agency (EPA) in 1973, the International Standards Organization (ISO) in 1975, and NIOSH in 1972. EPA, ISO, and NIOSH developed their risk assessments based on the AAOO 1959 definition, which was used by the original researchers.

TABLE 1.—OSHA RISK TABLE

Sound level (dBA)	Excess risk (%)			
	ISO (1975)	EPA (1973)	NIOSH (1972)	Range
80	0	5	3	0–5
85	10	12	15	10–15
90	21	22	29	21–29

The excess risk of material impairment under the 1997/1998 NIOSH reanalysis is discussed earlier in this preamble under *Definition of Material Impairment.*

Table 1 shows that the excess risk of material impairment after a working lifetime at a noise exposure of 80 dBA is low. On the other hand, a noise exposure of 85 dBA indicates a risk ranging from 10% to 15%. At a noise exposure of 90 dBA, the risk ranges from 21% to 29%.

Table 2 presents additional information on the risk assessments calculated by NIOSH (Table XVII, Criteria Document, 1972), one portion of which was included in Table 1. Table 2 is based on both the AAOO 1959 and the OSHA/NIOSH–72 definitions. It shows that NIOSH's risk assessment found little difference between using the OSHA/NIOSH–72 definition and using the AAOO 1959 criteria.

TABLE 2.—NIOSH RISK TABLE

Sound level (dBA)	Excess risk (%)	
	OSHA/ NIOSH–72	AAOO 1959
80	3	3
85	16	15
90	29	29

Regarding how adjustments to the definitions used would affect the excess risk figures above, MSHA agrees with several researchers referred to by commenters. Suter (1988) estimates that the excess risk would be somewhat higher if 500 Hz were excluded and 3000 Hz were included in the definition of material impairment. Sataloff (1984) reports that the effect of including hearing loss at 3000 Hz in the AAOO 1959 definition of hearing impairment would dramatically increase the prevalence of hearing impairment, as follows. After 20 years of exposure to intermittent noise that peaked at 118 dBA, 3% of the workers experienced hearing impairment according to the AAOO 1959 definition of hearing impairment. If the AAO–HNS 1979 definition is used, the percentage increases to 9%. Royster et al. confirmed that the exclusion of 500 Hz and the inclusion of 3000 Hz increased the number of hearing impaired individuals in their study of potential workers' compensation costs for hearing impairment (Royster et al., 1978). Using an average hearing loss of 25 dB as the criterion, Royster found that 3.5% of the industrial workers developed a hearing impairment according to AAOO 1959, 6.2% according to AAO–HNS 1979, and 8.6% according to the OSHA/NIOSH–72 definition.

MSHA included the following three tables in the preamble to the proposed rule in order to show data regarding the working lifetime risk of material impairment based upon the three different definitions commonly used for material impairment. Table 3 is based on AAO 1959, Table 4 is based on AAO–HNS 1979, and, Table 5 is based on the OSHA/NIOSH–72 definition. MSHA constructed these tables based on data presented in Volume 1 of the Ohio State Research Foundation Report (Melnick et al., 1980) commissioned by OSHA. The hearing level data used to construct the tables are taken from summary graphs in that report. The noise-exposed population was 65 years old, with 40 years of noise exposure. Because the control group was not screened for the cause of hearing loss, a high level of non-occupational hearing loss may undervalue the excess risk from occupational noise exposure. The researchers (Melnick et al., 1980) added the component of noise-induced permanent threshold shift (the actual shift in hearing level due only to noise exposure) to the control data.

MSHA did not receive any comments on the three tables reflecting the predictable fact that, for any given population, the excess risk of material impairment due to noise exposure will be greater using the AAO–HNS 1979 definition than using the AAOO 1959 definition. Likewise, the excess risk of material impairment due to noise exposure will be greater using the OSHA/NIOSH–72 definition than using the AAO–HNS 1979 definition. All three tables show a smaller excess risk than did the data presented in Table 1.

TABLE 3.—RISK OF IMPAIRMENT USING AAOO 1959 DEFINITION OF IMPAIRMENT AND USING MELNICK ET AL., 1980 DATA

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
non-noise	26.8	0.0
80 dBA	26.8	0.0
85 dBA	27.8	1.0
90 dBA	31.4	4.6

TABLE 4.—RISK OF IMPAIRMENT USING AAO–HNS 1979 DEFINITION OF IMPAIRMENT AND USING MELNICK ET AL., 1980 DATA

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
non-noise	41.6	0.0
80 dBA	41.8	0.2

TABLE 4.—RISK OF IMPAIRMENT USING AAO–HNS 1979 DEFINITION OF IMPAIRMENT AND USING MELNICK ET AL., 1980 DATA—Continued

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
85 dBA	44.4	2.8
90 dBA	50.0	8.4

TABLE 5.—RISK OF IMPAIRMENT USING OSHA/NIOSH–72 DEFINITION OF IMPAIRMENT AND USING MELNICK ET AL., 1980 DATA

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
non-noise	48.5	0.0
80 dBA	48.7	0.2
85 dBA	51.5	3.0
90 dBA	57.9	9.4

The excess risk in Table 1 represents the risk assessments conducted by ISO, EPA, and NIOSH in three different years during the early 1970's. All three agencies used the same definition of impairment (AAOO 1959) in evaluating available studies. Their results are similar.

MSHA applied three different definitions of hearing impairment to the same data (Melnick 1980) to show that the excess risk of impairment varies depending on how you define impairment. Tables 3, 4, and 5 present the results of this analysis. Because Melnick did not screen his control group for the cause of the hearing loss (could be non-occupational noise exposure), the amount of hearing loss in the supposed non-noise exposed group is high. By subtracting the value for the non-noise exposed (control) group from the values determined for groups with different levels of occupational noise exposure, we determined the excess risk for populations exposed at that level.

Tables 6 and 7 were also included in the preamble to the proposed rule to show data derived by Melnick in *Forensic Audiology* (1982) for risk of impairment due to noise exposure. These tables show the results of applying the AAO-HNS 1979 method to a population that is 60 years old with 40 years of exposure to the specified sound levels. In both tables, the data represent the noise-induced permanent threshold shift calculated by Johnson, but the screening criteria used in the two tables are different. Melnick's data in Table 6 are based upon the screened age-induced hearing loss data (that is, they are screened for non-occupational hearing loss) of Robinson and Passchier-Vermeer, whereas Table 7 is based on unscreened, non-occupational hearing loss data from the 1960–62 U.S. Public Health Survey.

Overall, the excess risk information presented in these tables is closer to that in Table 1 than to that in Tables 3, 4, and 5, but still differs. Tables 6 and 7 directly illustrate the effect of screening populations in determining excess risk due to occupational noise exposure. Comparison of these tables shows that the percentage of workers with hearing impairment is greater in the table constructed with an unscreened population as the base.

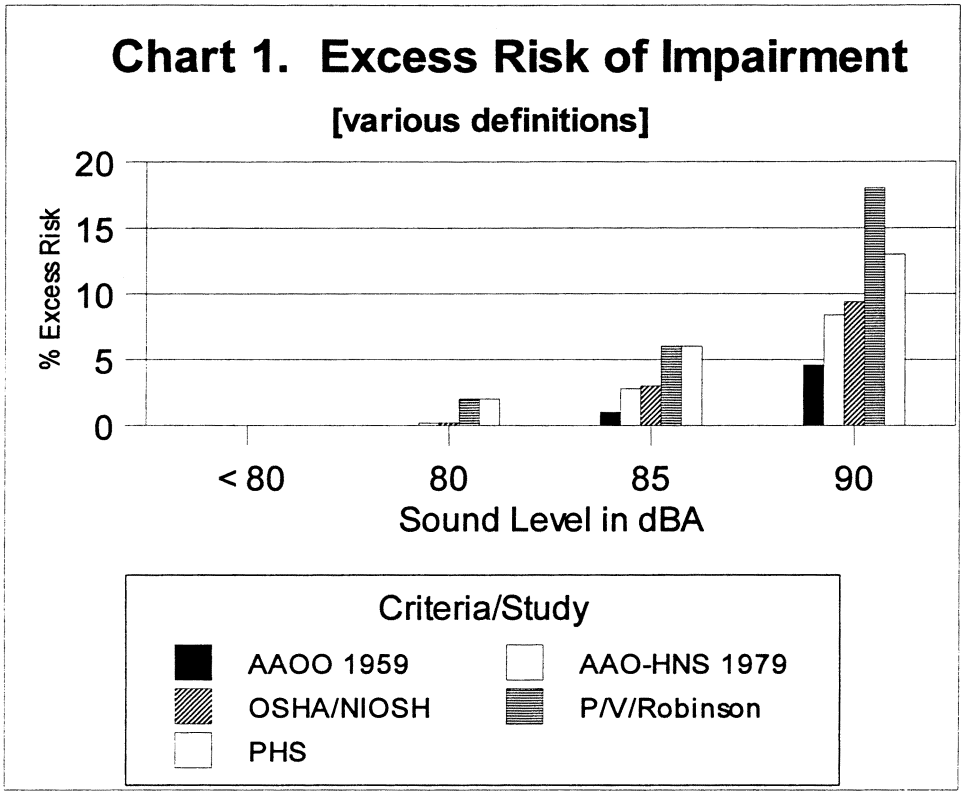
TABLE 6.—RISK OF IMPAIRMENT USING AGE-INDUCED HEARING LOSS DATA OF PASSCHIER-VERMEER AND ROBINSON

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
75 dBA	3	0
80 dBA	5	2
85 dBA	9	6
90 dBA	21	18

TABLE 7.—RISK OF IMPAIRMENT USING NON-OCCUPATIONAL HEARING

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
75 dBA	27	0
80 dBA	29	2
85 dBA	33	6
90 dBA	40	13

Chart 1 incorporates the risk assessment results of Tables 3, 4, 5, 6, and 7.



Note that the data from both Table 6 and Table 7 used the AAO-HNS 1979 definition. The exact numbers of those at risk varies with the study because of the definition of material impairment used, the screening criteria used, and the selection of the control group. Despite these differences, the data consistently demonstrate three points:

(1) The excess risk increases as noise exposure increases;

(2) There is a significant risk of material impairment of hearing loss for workers exposed over their working lifetimes to sound levels of 85 dBA; and

(3) Lowering the exposure from 90 dBA to 85 dBA reduces the excess risk of developing a material impairment by approximately half.

Related Studies of Worker Hearing Loss

The preamble to the proposed rule indicated that MSHA examined a large body of data on the effects of varying industrial sound levels on worker hearing sensitivity, including studies that specifically addressed the mining industry. Regardless of the industry in which the data were collected, MSHA found that exposures to similar sound levels results in similar degrees of material impairment in workers. These studies support the conclusions reached in the previous section about the risk of impairment at different sound levels.

NIOSH (Lempert and Henderson, 1973) published a report in which the relationship of noise exposure to noise-induced hearing loss was described. NIOSH studied 792 industrial workers whose daily noise exposures were 85 dBA, 90 dBA, and 95 dBA. The noise-exposed workers were compared to a control group whose noise exposures were lower than 80 dBA. The exposures were primarily to steady-state noise, but the exposure levels fluctuated slightly in each category. Both groups were screened to exclude non-occupational noise exposure or medical complications. The subjects ranged in age from 17 to 65 years old. The report clearly shows that workers whose noise exposures were 85 dBA experienced more hearing loss than the control group. In addition, as the noise exposures increased to 90 dBA and 95 dBA, the magnitude of the hearing loss increased.

NIOSH reanalyzed these data in a report, ''Reexamination of NIOSH Risk Estimates'' (Prince et al., 1997), which was published after MSHA's proposed rule. The authors reanalyzed the data from NIOSH's report (Lempert and Henderson, 1973) that had established a dose-response relationship for noise. In the original study, Lempert and Henderson had interpreted response to be proportional to dose. Prince interpreted the relationship to be a more complex one, and this analysis resulted in a better fit with the data. Prince's approach also consistently yielded a slightly lower excess risk. Thus, Prince concluded that there is an excess risk of developing a hearing impairment from a noise exposure of 85 dBA and above.

NIOSH (1976) published the results from a study on the effects of prolonged exposure to noise on the hearing sensitivity of 1,349 coal miners. From this study, NIOSH concluded that coal miners were losing their hearing sensitivity at a faster rate than would be expected from the measured environmental sound levels. While the majority of noise exposures were less than a TWA_8 of 90 dBA (only 12% of the noise exposures exceeded a TWA_8 of 90 dBA), the measured hearing loss of the older coal miners was indicative of noise exposures between a TWA_8 of 90 dBA and 95 dBA. NIOSH offered as a possible explanation that some miners are exposed to ''very intense noise'' for a sufficient number of months to cause the hearing loss.

Coal miners in the NIOSH (1976) study experienced a higher incidence of hearing impairment than the non-occupational-noise-exposed group (control group) at each age. Using the OSHA/NIOSH–72 definition of material impairment, 70% of 60-year-old coal miners were impaired while only a third of the control group were. This would correspond to an excess risk of 37%.

NIOSH also sponsored a study, conducted by Hopkinson (1981), on the

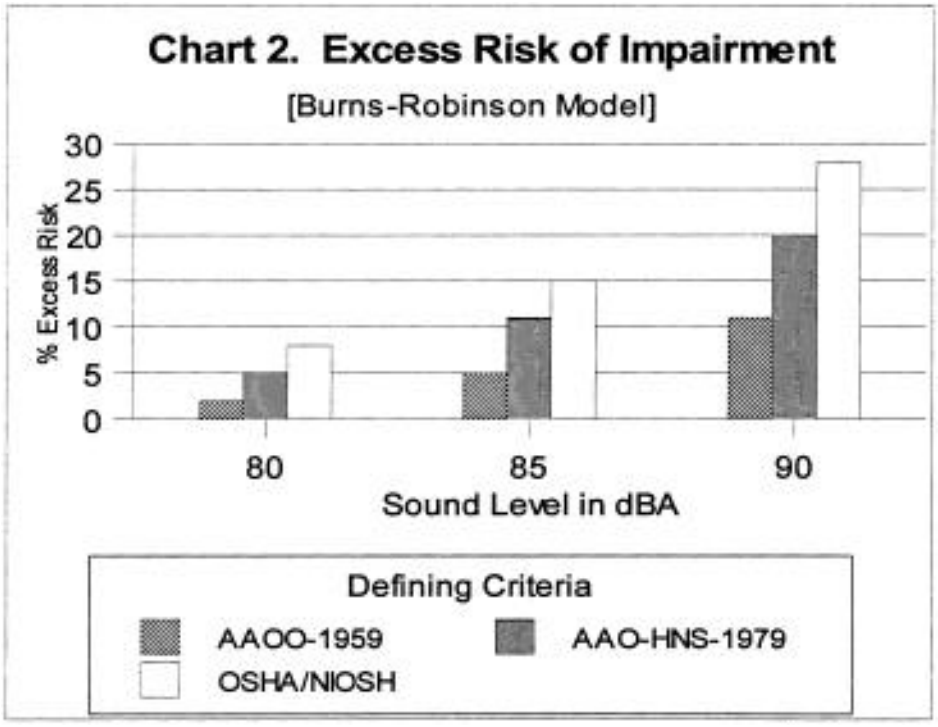
prevalence of middle ear disorders in coal miners. In this study, the hearing sensitivity of 350 underground coal miners was measured. The results of this study supported the results of the 1976 NIOSH study on the hearing sensitivity of underground coal miners (i.e., coal miners had worse hearing than the controls); the measured median hearing levels of the miners were the same in the two studies.

OSHA's 1981 preamble to its Hearing Conservation Amendment referred to studies conducted by Baughn; Burns and Robinson; Martin et al.; and Berger et al. Baughn (1973) studied the effects of average noise exposures of 78 dBA, 86 dBA, and 90 dBA on 6,835 industrial workers employed in midwestern plants producing automobile parts. Noise exposures for these workers were measured for 14 years and, through interviews, exposure histories were estimated as far back as 40 years. Neither the control group nor the noise-exposed groups were screened for anatomical abnormalities of the ear.

Baughn used this data to estimate the hearing levels of workers exposed to 80 dBA, 85 dBA, and 92 dBA and extrapolated the exposures up to 115 dBA. Based upon the analysis, 43% of 58-year-old workers exposed for 40 years to noise at 85 dBA would meet the AAOO 1959 definition for hearing impairment. Thirty-three percent of an identical but non-noise exposed population would be expected to meet the same definition of impairment. The excess risk from exposure to noise at 85 dBA would therefore be 10%. Using the same procedure, the excess risk for 80 dBA is 0% and for 90 dBA is 19%.

Burns and Robinson (1970) studied the effects of noise on 759 British factory workers exposed to average sound levels between 75 dB and 120 dB with durations ranging between one month and 50 years. The control group consisted of 97 non-noise exposed workers. Thorough screening removed workers with unknown exposure histories. Also excluded were people with ear disease or abnormalities and language difficulty. Burns and Robinson analyzed 4,000 audiograms and found that the hearing levels of workers exposed to low sound levels for long periods of time were equivalent to those of other workers exposed to higher sound levels for shorter durations. From the data, the researchers developed a mathematical model that predicts hearing loss between 500 Hz and 6000 Hz in certain segments of the exposed population.

Using the Burns and Robinson mathematical model, MSHA constructed Chart 2. The chart shows that a noise exposure of 85 dBA over a 40-year career is clearly hazardous to the hearing sensitivity of 60-year-old workers. Chart 2 compares the same three definitions of impairment to the Burns-Robinson Model as used in Tables 3, 4, and 5 with the Melnick data. Chart 2 confirms the relationship between the definition of impairment and the computation of excess risk.



The prevalence of hearing loss in a group of 228 Canadian steel workers, ranging in age from 18 to 65 years of age, was compared to a control group of 143 office workers in a study conducted by Martin et al. (1975). The researchers reported that the risk of hearing impairment (average of 25 dB at 500, 1000, and 2000 Hz) increases significantly between 85 dBA and 90 dBA. Up to 22% of these workers would be at risk of incurring a hearing impairment with a TWA_8 90 dBA permissible exposure level compared to 4% with a TWA_8 85 dBA permissible exposure level. Both the noise-exposed and the control groups were screened to exclude workers with non-occupational hearing loss.

Passchier-Vermeer (1974) reviewed the results of eight field investigations on hearing loss among 20 groups of workers. About 4,600 people were included in the analysis. The researcher concluded that the limit of permissible noise exposure (defined as the maximum level which did not cause measurable noise-induced hearing loss, regardless of years of exposure) was shown to be 80 dBA. Furthermore, the researcher found that noise exposures

above 90 dBA caused considerable hearing loss in a large percentage of employees and recommended that noise control measures be instituted at this level. The researcher also recommended that audiometric testing be implemented when the noise exposure exceeds 80 dBA.

Berger, Royster, and Thomas (1978) studied 42 male and 58 female workers employed at an industrial facility and a control group of 222 persons who were not exposed to occupational noise. Of the 322 individuals included in the study, no one was screened for exposures to non-occupational noise such as past military service, farming, hunting, or shop work, since these exposures were common to all. The researchers found that exposure to a daily steady-state L_{eq} of 89 dBA for 10 years caused a measurable hearing loss at 4000 Hz (L_{eq} is an average sound level computed on a 3-dB exchange rate). According to the researchers, the measurable loss was in close agreement with the predictions of Burns and Robinson, Baughn, NIOSH, and Passchier-Vermeer.

Studies of Impact of Lower Sound Levels

Table 8 reproduces the most recent data on the harm that can occur at lower sound levels, found in the International Standards Organization's publication ISO 1999 (1990). The noise exposures for the population ranged between 75 dBA and 100 dBA. Table 8 presents the mean and various percentages of the hearing level of a 60-year-old male exposed to noise for 40 years. The noise-induced permanent threshold shift in hearing was combined with the age-induced hearing loss values to determine the total hearing loss. The age-induced hearing loss values were from an unscreened population representing the general population.

TABLE 8.—HEARING LEVEL RESULTING FROM SELECTED NOISE EXPOSURES

Sound level in dBA	Hearing level in dB			
	500 Hz	1000 Hz	2000 Hz	3000 Hz
80	12	6	10	30
85	12	6	11	33
90	12	6	16	42

Information about the effects of lower noise exposures on hearing are especially valuable in attempting to identify subpopulations particularly sensitive to noise. The Committee on Hearing, Bioacoustics, and Biomechanics of the National Research Council (CHABA) (1993) reviewed the scientific literature on hazardous exposure to noise. The report reaffirmed many of the earlier findings of the Committee. Based on temporary threshold shift (TTS) studies, the report suggests that to prevent noise-induced hearing loss, exposures must remain below 76 dBA to 78 dBA. Based on field studies, the report suggests that, to guard against any permanent hearing loss at 4000 Hz, the sound level should be less than 85 dBA, and possibly less than 80 dBA. Finally, the report suggests that therapeutic drugs, such as aminoglycoside antibiotics and salicylates (aspirin), can interact synergistically with noise to yield more hearing loss than would be expected by either stressor alone.

Few current studies of unprotected U.S. workers exposed to a TWA_8 between 85 and 90 dBA are available, because the hearing conservation program of OSHA's noise standard requires protection at those levels for most industries (the exception being employers engaged in oil and gas well drilling and servicing operations). The difficulty in constructing new retrospective studies of U.S. workers has been noted by Kryter (1984) in his chapter entitled ''Noise-Induced Hearing Loss and Its Prediction.'' He states that due to the global trend in the last decade to institute noise control and hearing conservation programs, new retrospective studies are no longer feasible. Kryter believes that the retrospective studies of Baughn, Burns and Robinson, and the U.S. Public Health Service are thus the best available on the subject of noise-induced permanent threshold shift. Kryter developed a formula to derive the effective noise exposure level for damage to hearing from the earlier studies and determined the noise-induced permanent threshold shift at different percentiles of sensitivity at various audiometric test frequencies for a population of workers.

Studies of workers in other countries can provide valuable information in assessing the consequences of workplace noise exposure between 85 dBA and 90 dBA. Differences in socioeconomic factors such as recreational noise exposure, use of medicines harmful to the ear, and inflammation of the middle ear (otitis media) make it difficult to directly apply the results of studies of workers from other countries. However, MSHA has determined that these studies can be used as further support for the existence of a risk in the 80 to 90 dBA range.

Rop, Raber, and Fischer (1979) studied the hearing loss of 35,212 male and female workers in several Austrian industries, including mining and quarrying. The researchers measured the hearing levels of workers exposed to sound levels ranging from less than 80 dBA up to 115 dBA and arranged them into eight study groups based on average exposures. Assuming that exposure to sound levels less than 80 dBA did not cause any hearing loss, they assigned workers exposed to these levels to the control group. The researchers reported that workers with 6 to 15 years of exposure at 85 dBA had significantly worse hearing than the control group. For the five groups whose exposure was between 80 dBA and 103.5 dBA, hearing loss tended to increase steadily during their careers but leveled off after 15 years. In contrast, for workers exposed to sound levels above 103.5 dBA, hearing loss continued to increase beyond 15 years.

A statistical method for predicting hearing loss was developed using the data collected in the Rop study. The researchers predicted that 20.1% of the 55-year old males in the control group with 15 years of work experience would incur hearing loss. For a comparable group of males with exposures at 85 dBA the risk increased to 41.6%; at 92 dBA the risk increased to 43.6%; and at 106.5 dBA the risk increased to 72.3%. The study concluded that exposure to sound levels at or above 85 dBA damaged workers' hearing.

A study (Schwetz et al., 1980) of 25,000 Austrian workers concluded that the workers exposed to sound levels between 85 dBA and 88 dBA experienced greater hearing loss than workers exposed to sound levels less than 85 dBA. The study further

concluded that at 85 dBA there is no hearing recovery, ultimately causing noise-induced hearing loss. Schwetz, therefore, recommended 85 dBA as the critical intensity—the permissible exposure limit.

Stekelenburg (1982) calculated age-induced hearing loss according to Spoor and noise-induced hearing loss according to Passchier-Vermeer. Based upon these calculations, Stekelenburg suggested 80 dBA as the acceptable level for noise exposure over a 40 year work history. At this exposure, Stekelenburg calculates that socially impaired hearing due to noise exposure would be expected in 10% of the population.

A study of 537 textile workers by Bartsch et al. (1989), which defined socially significant hearing loss as a 40 dB hearing level at 3000 Hz, found that the hearing loss resulting from exposures below 90 dBA mainly occurs at frequencies above 8000 Hz (these frequencies are not normally tested during conventional audiometry). Even though the study concluded that the hearing loss was not of ''social importance,'' it did support a reduced hearing loss risk criterion of 85 dBA be used to protect the workers' hearing.

With the exception of the Bartsch study, the results of the foreign studies are generally consistent with those of U.S. workers. The Bartsch conclusion that the hearing loss is not of ''social importance'' is not supported by the many studies, discussed earlier, that point to the importance of good hearing sensitivity at 3000 Hz in order to understanding speech in everyday, noisy environments. Based on experience, MSHA has found that people will encounter hearing difficulty before their hearing loss level reaches 40 dB at 3000 Hz.

One commenter stated that the studies cited by MSHA in justifying the risk of material impairment at exposures below 90 dBA were based on sound levels determined using older instrumentation. Assuming that MSHA would be using more modern instrumentation for compliance purposes, he suggested that the Agency should not use the old data and studies. The commenter suggested that MSHA either raise or retain the criterion level of a TWA_8 of 90 dBA or have the studies re-done with newer instrumentation before proceeding with rulemaking. MSHA maintains that the studies remain valid, however, because they were conducted using methodologies based on sound level meters. The studies, like the final rule, were based on the standardized definitions of A-weighting network and slow response and usually measured steady-state noise. Therefore, the studies are reliable and applicable. MSHA's risk assessment is based upon the best scientific data available to the Agency, as required by the Mine Act.

Reported Hearing Loss Among Miners

To confirm the magnitude of the risks of noise-induced hearing loss among miners, MSHA examined the following evidence of reported hearing loss among miners.

Audiometric Databases

Audiometric testing is not currently required in metal and nonmetal mining and is offered in coal mining only after a determination of overexposure to noise. However, in connection with its ongoing assessments of the effectiveness of the current standards in protecting miner health, MSHA has obtained two audiometric databases consisting of 20,022 audiograms conducted on 3,439 coal miners and 42,917 audiograms conducted on 9,050 metal and nonmetal miners. The audiometric evaluations on the coal miners were conducted between 1971 and 1994, mostly during the latter years. The audiograms on metal and nonmetal miners were collected between 1974 and 1995. Each audiogram in the data set contained a miner identification number, age, date of test, and audiometric thresholds for each ear at 500, 1000, 2000, 3000, 4000, and 6000 Hz. Supplemental data such as dates of employment, noise exposures, use of protective equipment, and training histories were not provided. MSHA asked NIOSH to examine the audiometric data and both MSHA and NIOSH (Franks, 1996) have performed analyses of the coal miner database.

Coal Miner Audiometric Data

Franks used a computer expert system to screen the data for year-to-year consistency of the audiograms, test-room background noise, and asymmetry in hearing that might indicate a unilateral loss of hearing (which is not characteristic of occupational noise-induced hearing loss). More than 2,500 questionable audiograms were reviewed by NIOSH audiologists.

The final screened database consisted of 17,260 audiograms representing 2,871 coal miners. It was compared to the database in Annex A of ''ISO–1999.2 Acoustics—Determination of Occupational Noise Exposure and Estimation of Noise-Induced Hearing Loss.'' NIOSH's report entitled ''Analysis of Audiograms for a Large Cohort of Noise-Exposed Miners'' (NIOSH, 1996) indicates that 90% of these coal miners had a hearing impairment (defined as an average 25-dB hearing level at 1000, 2000, 3000, and 4000 Hz) by age 51 compared with only 10% of the general population. Even at age 69, only 50% of the non-noise-exposed population acquire a hearing impairment.

By age 35 the average miner has a mild hearing loss, and 20% of miners have a moderate loss. By age 64, fewer than 20% of the miners have marginally normal hearing, while 80% have moderate to profound hearing loss. In contrast, 80% of the non-noise-exposed population will not acquire a hearing loss as severe as the average miner's, regardless of how long they live. Further, Franks concluded that miners, after working 20 to 30 years, could find themselves in life-threatening situations resulting from their inability to hear safety signals and roof talk.

Metal and Nonmetal Miner Audiometric Data

NIOSH used a computer expert system to screen the audiometric data on metal and nonmetal miners. The data were screened for year-to-year consistency of the audiograms, test room background noise, and asymmetry in hearing that might indicate a loss of hearing in only one ear (not characteristic of an occupational noise-induced hearing loss). The expert system identified 20,429 questionable audiograms, and a subset of 1000 were reviewed by an audiologist.

The final screened database consisted of 22,488 audiograms representing 5,244 metal and nonmetal miners. The data were compared to those in Annex A of ''ISO–1999.2 Acoustics—Determination of Occupational Noise Exposure and Estimation of Noise-Induced Hearing Loss.'' NIOSH's report, entitled ''Prevalence of Hearing Loss for Noise-Exposed Metal/Nonmetal Miners'' (NIOSH, 1997), supports the conclusions of earlier scientific studies that metal and nonmetal miners are losing their hearing sensitivity faster than the general population. It indicates that, ''At age 20, approximately 2% have hearing impairment, rising to around 7% at age 30, 25% at age 40, 49% at age 50, and 70% by age 60. By contrast, 9% of the non-occupationally noise-exposed have hearing impairment at age 50.'' Franks noted a difference in the increase of hearing loss between men and women. He also noted that, due to the NIOSH definition of hearing impairment used in the study (inclusion of 4,000 Hz.), there was a sufficient degree of hearing impairment in the population to cause communications problems, because miners would have difficulty in understanding some consonants whose

frequency is between 3,000 and 4,000 Hz.

MSHA received comments on both NIOSH studies. One commenter asserted that Franks used an incorrect screening process for the audiograms as well as the incorrect control group (ANNEX A of ISO R–1999) and alleged other deficiencies in the studies. This commenter stated that he reanalyzed the data using minimal screening of audiograms, and compared it to the ''correct'' control group (Annex C of ANSI S3.44–1996, ''Acoustics—Determination of Occupational Noise Exposure'') estimating that the hearing impairment of the miners was caused by noise exposure. The commenter concluded that both the coal and metal and nonmetal audiometric data suggest that typical occupational noise exposures are on the order of lifetime time-weighted exposures of about 89 dBA. This commenter thus suggests that there is no need for MSHA to continue with rulemaking, as the current regulations are adequate in protecting miners' hearing sensitivity. Some commenters concurred with the re-analysis of the NIOSH studies performed by this commenter. MSHA notes, however, that there was no significant difference between the control groups, as the International Standards Organization 1999.2 standard and the American National Standards Institute S3.44 standard are virtually identical—the ANSI document having been adapted from the ISO document.

However, MSHA also received a great deal of support for the NIOSH studies, which showed that the use of the Annex A control group—highly screened audiometric data was appropriate and the use of Annex B or C in the reanalysis was inappropriate.

One commenter stated, ''The use of Annex B * * * is questionable because these data were not screened to exclude persons with occupational noise exposure.''

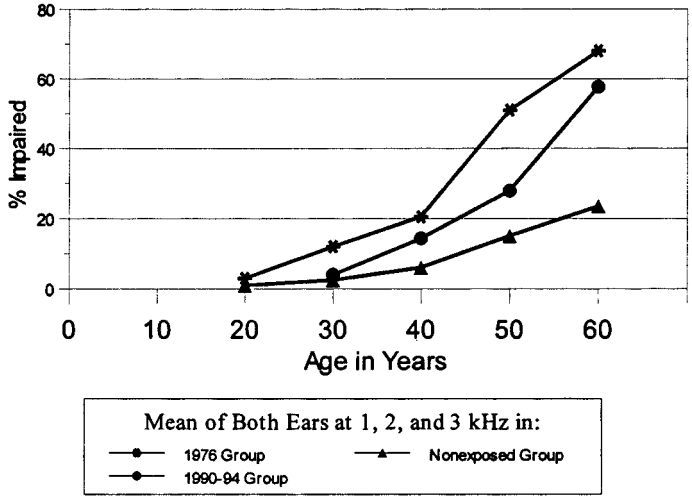
MSHA agrees with Dr. Franks in that Annex A was the most appropriate database for the analysis conducted because it is the only database in ISO 1999 for which year-to-year changes in hearing and prevalence of hearing impairment could be calculated. MSHA also received support from commenters for the NIOSH studies. Additionally, MSHA conducted its own research and determined that miners are still losing more of their hearing sensitivity than non-noise-exposed workers. Annex A is a more stringent screening method than Annex C which was used by Dr. Clark. Annex A was selected because it represents a highly screened sample, free from ''undue noise exposure'' and ear disease.

Several researchers who studied the health status of miners provided testimony based on numerous research reports. Their conclusion was that miners have incurred a greater loss of hearing sensitivity than the general population has. MSHA believes that the NIOSH studies are valid evidence that supports the rule.

MSHA conducted a separate analysis of the audiometric data for coal miners, using the 25 dB hearing level at 1000, 2000, and 3000 Hz definition of material impairment of hearing. In order to reflect current trends, the percentage of current coal miners (whose latest audiogram was taken between 1990 and 1994) with material impairment of hearing was compared to NIOSH's study on coal miners published in 1976. The results are shown in Chart 3, along with NIOSH's 1976 results for both the noise-exposed miners and the non-noise-exposed controls.

The data points for Chart 3 represent the mean hearing loss of both ears at 1000, 2000, and 3000 Hz relative to audiometric zero. The top line represents the 1976 (pre-noise-regulation) group, the middle line represents the 1990–1994 (noise-regulated) group, and the bottom line represents the non-noise-exposed group. Although there has been some progress under the existing regulations, miners are still losing more of their hearing sensitivity than non-noise-exposed workers. This is true even if the analysis is limited to miners under 40 years of age (that is, those who have worked only under the current coal noise regulations).

Chart 3. Percentage of Coal Miners Exceeding 25 dB Hearing Loss



MSHA also analyzed the audiometric data for the number of standard threshold shifts and reportable hearing loss cases. In the preamble to the proposal, MSHA defined a standard threshold shift as a change in hearing threshold level, relative to the miner's original or supplemental baseline audiogram, of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear. The final rule adopts this definition. The importance of a standard threshold shift is that it reveals that a permanent loss in hearing sensitivity

has occurred. When the change from the baseline averages 25 dB or more at the same frequencies, the hearing loss must be reported to MSHA. ''Standard threshold shift'' and ''reportable hearing loss'' are discussed in greater detail below.

For the second analysis, the first audiogram of each miner was assumed to be the baseline. The last audiogram of each miner was compared to the baseline. Neither audiogram was corrected for age-induced hearing loss. Also, because of the lack of supporting data, it was not possible to exclude non-occupational standard threshold shifts, resulting in a greater number of standard threshold shifts. The results of the 3,102 coal miners audiograms analyzed are presented in Chart 4.

Chart 4. Percentage of Coal Miners Exceeding Selected Criteria

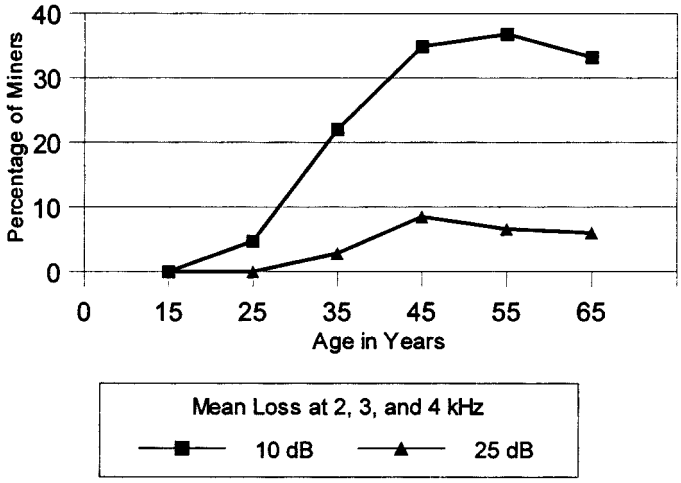


Chart 4 clearly shows that many of the coal miners were found to have a standard threshold shift. The likelihood of acquiring a standard threshold shift generally increases with advancing age. The MSHA analysis was conservative in that only the first and last audiograms were included, resulting in each miner having only one standard threshold shift. In fact, a miner may have experienced multiple standard threshold shifts.

In addition to the above audiometric data, two NIOSH studies mentioned in the section of this preamble on risk of impairment support MSHA's conclusion that miners are at risk of noise-induced hearing loss. In the 1976 NIOSH study, although the majority of noise exposures were less than 90 dBA, approximately 70% of the 60-year old coal miners had experienced a material impairment of hearing using the OSHA/NIOSH–72 definition. The Hopkinson (1981) NIOSH study also supports the earlier NIOSH results.

Data Provided by Commenters

Two commenters to the proposed rule provided information on the hearing sensitivity of miners. The first commenter estimated that 45 to 50% of employed miners have experienced a standard threshold shift (at least 25% if corrected for age-induced hearing loss). Further, this commenter estimated that about 25% of the miners have an average hearing loss of 25 dB or more at 1000, 2000, and 3000 Hz. Corrected for age-induced hearing loss, the percentage of miners with this level of hearing loss decreased to about 15%.

The second commenter referred to an oral presentation by Smith et al. at the 1989 Alabama Governor's Safety and Health Conference. (MSHA notes that the Smith presentation itself is not part of the rulemaking record, although Smith verified that the comment was correct via letter (December 5, 1994). MSHA believes that the Smith paper is valid evidence which supports the rule.) This commenter stated that Smith et al. reported on the evaluation of serial audiograms from 100 workers exposed to sound levels less than 85 dBA. The authors found that 15% of these workers would have some degree of hearing impairment using the AAO–HNS 1979 definition. They also reported that at least 26% of the mining population would have some degree of hearing impairment using the same definition.

In response to MSHA's request for additional specific information regarding hearing loss among miners, some commenters stated that they had no workers' compensation awards for miners' hearing loss at their operations. No commenters supplied information regarding the cost of compensation awards. Some commenters supplied specific information on miner's age, occupation, and degree of hearing loss. Several commenters submitted data, some in conjunction with an analysis of the data, in support of their position that hearing protectors can be effective as the primary means of protecting miners against occupational noise-induced hearing loss.

The NIOSH (Franks) analysis of the two databases cited by MSHA and the three analyses conducted by Clark and Bohl under the auspices of the National Mining Association (the first a report summarizing a reanalysis of the NIOSH Coal Miner Study, the second a report containing a reanalysis of the NIOSH Metal and Nonmetal Miner Study, and the third a report containing an analysis of two data bases from the National Mining Association) indicate that miners are developing hearing losses to a degree that constitutes material impairment. These analyses also indicate that the amount of hearing loss and the percentage of the population that is impaired is highly variable. Further, some individual miners received a substantial hearing loss. The differences in the conclusions of these studies are attributable to the different baselines used in the analyses for comparison of the exposed populations. The NIOSH analysis included detailed screening of the data and used a control group (described in Appendix A of

ANSI S3.44, ''American National Standard Determination of Occupational Noise Exposure and Estimation of Noise-Induced Hearing Impairment'') where the hearing losses of the group are strictly due to aging. In contrast, the Clark-Bohl analyses and conclusions did not include screening of the data and used for comparison the control group (described in Appendix C of ANSI S3.44) where the control group's hearing losses included those due to exposures to less than two weeks of occupational noise, exposures to non-occupational noise, otological abnormalities, as well as those due to aging. There is insufficient information in the studies to allow a determination of which method of analysis is more appropriate or superior. As a result of the differences in approach between these analyses, the analyses arrive at different conclusions regarding the magnitude of the hearing losses exhibited by miners, although all of these analyses do indicate that some miners are developing a material impairment of hearing in varying degrees. Additionally, these analyses do not support the conclusion that a hearing conservation program that relies primarily or exclusively on the use of hearing protectors effectively protects all miners from noise-induced occupational hearing loss.

Other studies and data were submitted by other commenters in support of their position that a hearing conservation program that relies primarily or soley on the use of hearing protectors can adequately protect miners' hearing. These studies and data are discussed later in the preamble.

Reported Hearing Loss Data

Under MSHA's existing regulations at 30 CFR part 50, mine operators are required to report cases of noise-induced hearing loss to MSHA when it is diagnosed by a physician or when the affected miner receives an award of compensation. Between 1985 and 1997, mine operators reported a total of 2,590 cases of noise-induced hearing loss. In a substantial number of these cases, the occupational noise exposures occurred after the implementation of the current noise regulations.

Coal mine operators reported 674 cases among surface miners, 1,098 cases among underground miners, and 14 cases among miners whose positions were not identified. According to coal mine operators, 710 of the 1,786 cases began working at a mine after the implementation of the noise regulations for coal mines—1972 for underground coal mining and 1973 for surface coal mining. Workers with no reported mining experience were excluded from the analysis.

Metal and nonmetal mine operators reported 650 cases among surface miners and 154 cases among underground miners, a total of 804 cases. According to mine operators, 172 of the 804 cases began working at a mine after the implementation of noise regulations for metal and nonmetal mines in 1975. Again, workers with no reported mining experience were excluded from the analysis.

Comparing the two types of mining, there were significantly more reported hearing loss cases at coal mines than at metal and nonmetal mines, and a higher proportion of those cases were reported of workers who began working after the implementation of the current standards. This is despite the fact that, at present, there are more metal and nonmetal miners than coal miners employed in the United States. A possible explanation of the difference between reported cases of noise-induced hearing loss among coal and metal and nonmetal miners may be that there is more frequent use of engineering noise controls in metal and nonmetal mining. Because the occupational noise standards for coal mines allow inspectors to take into account the use of hearing protectors in determining compliance, most coal mines use hearing protectors for compliance unless the engineering controls are inexpensive or come with the equipment. Metal/nonmetal mines are not allowed to use hearing protectors for compliance unless they have implemented all feasible engineering and administrative controls. Other possible reasons include differences in the severity of the noise exposures, variations among states' criteria for workers' compensation awards, continual use of hearing protectors, and the effectiveness of selected hearing protectors.

MSHA reviewed the narrative associated with each case of noise-induced hearing loss to determine the average degree of hearing loss. Although many narratives included reasons for reporting the noise-induced hearing loss, others only listed the illness as ''hearing loss.'' Approximately half the cases had no information on the severity of the hearing loss. Some contained designations such as standard threshold shift, OSHA reportable case, or percent disability. The narratives did not contain enough information with which to determine an average severity for cases of noise-induced hearing loss.

At least 40% of the reported cases in coal mining resulted in the miner being compensated for noise-induced hearing loss. Another 7% of the reported cases indicated that a workers' compensation claim for noise-induced hearing loss had been filed. In metal and nonmetal mines, at least 21% of the reported cases resulted from the miner being compensated for noise-induced hearing loss. Nearly another 4% of the reported cases indicated that a workers' compensation claim for noise-induced hearing loss had been filed.

The low number of cases reported to the Agency are believed to be due to either:

(1) The lack of a specific definition of a noise-induced hearing loss in MSHA's part 50 regulations and the resulting confusion on the part of mine operators about which cases to report;

(2) The lack of consistency among state requirements for awarding compensation for a noise-induced hearing loss and among physicians in diagnosing what constitutes a hearing loss caused by noise; or

(3) The lack of required periodic audiometric testing in the mining industry.

In sum, the hearing loss currently reported to MSHA under part 50 cannot be used to accurately characterize the incidence, prevalence, or severity of hearing loss in the mining industry. However, the data clearly show that miners are experiencing noise-induced hearing loss.

Workers' Compensation Data

The preamble to the proposal reviewed a study by Valoski (1994) of the number of miners receiving workers' compensation and the associated indemnity costs of those awards. Despite contacting each state workers' compensation agency and using two national databases, Valoski was unable to obtain data for all states, including those with significant mining activities. Valoski reported that between 1981 and 1985 at least 2,102 coal miners and 312 metal and nonmetal miners were awarded compensation for occupational hearing loss. The identified total indemnity costs of those awards exceeded $12.5 million, excluding rehabilitation or medical costs.

In a letter to MSHA, NIOSH cited the Chan et al. (1995) investigation for NIOSH of the incidence of noise-induced hearing loss among miners using information from the Bureau of Labor Statistics' (BLS) Supplementary Data System. In the 15 states that participated in the BLS program between 1984 and 1988, a total of 217 miners (93 coal miners and 124 metal and nonmetal miners) were awarded workers' compensation for noise-induced hearing loss. During those

years, mine operators from all states reported 873 cases of noise-induced hearing loss among coal miners and 286 cases among metal and nonmetal miners. Chan et al. stated that because of differing state workers' compensation requirements, it is not possible to directly compare noise-induced hearing losses among the states. These factors limit the usefulness of the data obtained.

MSHA reviewed reports on workers' compensation in Canada and Australia in the preamble to the proposed rule. The noise regulations and mining equipment used in these countries are similar to those in the United States. A recent report on workers' compensation awards to miners in Ontario, Canada (1991) showed that between 1985 and 1989, noise-induced hearing loss was the second leading compensable occupational disease. Approximately 250 claims for noise-induced hearing loss involving miners were awarded annually during that time.

Lescouflair et al. (1980) studied 278 metal and asbestos miners working in Quebec, Canada who claimed compensation for hearing loss. After excluding 28.7% (80) cases of non-mining noise-induced hearing loss, approximately 50% (99) of those diagnosed as having noise-induced hearing loss were shown to have a hearing impairment, based on the AAOO 1959 definition. An estimated 63% (125) showed an impairment based on AAO–HNS 1979 definition. The miners were exposed to noise for 15 to 49 years and showed a similar occurrence of hearing loss in both surface and underground occupations. The researchers also reported that there was no significant difference in noise-induced hearing loss between those miners exposed to a combination of intermittent and continuous noise and those exposed to intermittent noise, except at 2000 Hz.

Eden (1993) reported on the Australian mining industry's experience with hearing conservation. Eden quoted statistics from the Joint Coal Board which revealed that noise-induced hearing loss made up 59% to 80% of the reported occupational diseases from 1982 to 1992. Eden also reported that in New South Wales, 474 of 16,789 coal miners were awarded compensation for noise-induced hearing loss. The incidence rate for the total mining industry in New South Wales was about 23 cases per 1,000 workers during 1990–1991. This was the highest rate for any industry in New South Wales.

Although the compensation data are incomplete and cannot be used for estimating the prevalence of noise-induced hearing loss in the mining industry, the limited data available show that numerous cases are being filed each year, at considerable cost. Furthermore, according to the data reported by mine operators, many miners who developed noise-induced hearing loss worked in mining only after the implementation of the current noise regulations. This evidence of continued risk, although limited, supplements and supports the data previously presented from scientific studies.

Exposures in the U.S. Mining Industry

Miners in the U.S. are at significant risk of experiencing material impairment as a result of exposure to noise. Exposure levels remain high in all sectors of the mining industry, even though noise regulations have been implemented for some time. Exposures are particularly high in the coal mining sector, where hearing protectors, rather than engineering or administrative controls, remain the primary means of protection against noise-induced hearing loss.

Inspection Data

Noise exposure data has been collected by MSHA inspectors from thousands of samples gathered over many years. Table 9 indicates samples which present readings exceeding the permissible exposure level, (TWA_8 of 90 dBA) and also shows noise dose trends in metal and nonmetal mines based on over 232,500 full-shift samples collected using personal noise dosimeters by MSHA from 1974 through 1997.

TABLE 9.—MNM MINES NOISE DOSE TRENDS CYS 1974–97*

Fiscal year	Number of samples	Number samples exceeding 90 dBA TWA_8	Percent exceeding 90 dBA TWA_8
1974	363	139	38.3
1975	3,826	1,661	43.4
1976	9,164	3,725	40.6
1977	13,485	5,047	37.4
1978	17,326	6,415	37.0
1979	21,176	7,638	36.1
1980	15,185	5,203	34.3
1981	11,278	3,651	32.4
1982	3,208	876	27.3
1983	7,628	2,188	28.7
1984	8,525	2,311	27.1
1985	8,040	2,094	26.0
1986	9,213	2,402	26.1
1987	10,145	2,818	27.8
1988	10,514	2,417	23.0
1989	10,279	2,208	21.5
1990	13,067	2,721	20.8
1991	14,936	2,947	19.7
1992	14,622	2,809	19.2
1993	14,566	2,529	17.4
1994	15,979	2,627	16.4
1995	13,865	1,989	14.4
1996	16,686	2,228	13.4
1997	10.731	1,989	14.3

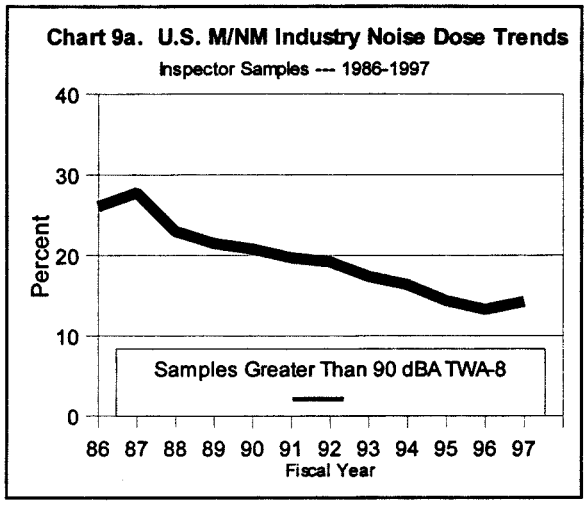
*From USBM's MIDAS data base. Italicized data not included in chart 9a.

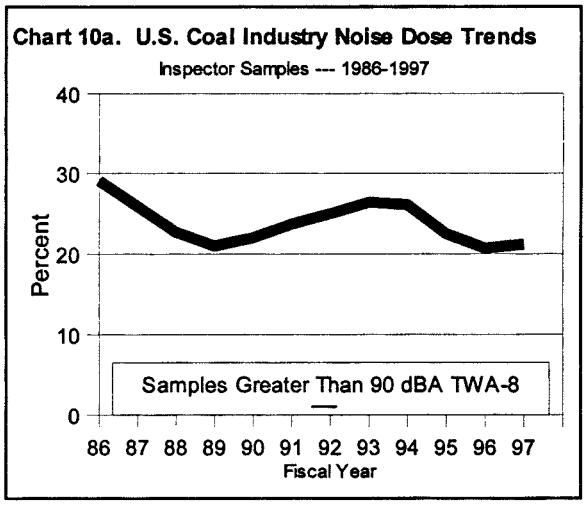
Table 10 shows samples with readings exceeding the permissible exposure level (TWA_8 of 90 dBA) and noise dose trends in coal mines based on 75,691 full-shift samples collected by MSHA from 1986 through 1997 using personal noise dosimeters. MSHA began routine sampling in coal mines in 1978 but did not begin building the database until 1986.

TABLE 10.—COAL MINE NOISE DOSE TRENDS, FYS 86–97

Fiscal year	Number of samples	Number samples exceeding 90 dBA TWA_8	Percent exceeding 90 dBA TWA_8
1986	2,037	593	29.1
1987	12,774	3,314	25.9
1988	11,888	2,702	22.7
1989	11,035	2,313	21.0
1990	10,861	2,388	22.0
1991	6,898	1,635	23.7
1992	6,636	1,660	25.0
1993	7,223	1,908	26.4
1994	6,339	1,656	26.1
1995	5,407	1,219	22.5
1996	6,064	1,256	20.7
1997	6,542	1,388	21.2

The inspection data for the coal and metal and nonmetal mining sectors have been graphed in Charts 9a and 10a, which indicate that the metal and nonmetal sector shows a gradual but consistent downward trend in the percentage of samples exceeding the current permissible exposure level. However, there was no such clear trend for coal mines during the same period. MSHA attributes this difference to the established use of engineering and administrative controls in metal and nonmetal mines.





MSHA notes that the interaction of two factors in the data represented in these charts may offset each other. First, the database is made up of samples collected in noisier mines and occupations. Second, the database includes both initial overexposure and the results of any resampling to determine compliance after the mine operator has utilized engineering or administrative controls (in the case of an overexposure found during an initial survey).

Dual Survey Data

MSHA conducted a special survey to compare noise exposures at different threshold levels, because the final rule requires integration of sound levels between 80 dBA and at least 130 dBA for the action level and between 90 dBA and at least 140 dBA for the permissible exposure level. The survey, referred to as the dual-threshold survey, involved the collection by MSHA inspectors of data in coal, metal, and nonmetal mines. Each sample was collected using a personal noise dosimeter capable of collecting data at both thresholds simultaneously. All other dosimeter settings were the same as those used during normal compliance inspections (the 90 dBA criterion level, 5-dB exchange rate, and A-weighting and slow response characteristics). The noise doses were mathematically converted to their corresponding TWA_8.

Tables 11 and 12 display the dual-threshold data in metal and nonmetal mines and in coal mines. Table 11 shows the dual-threshold data collected for metal and nonmetal mines from March 1991 through December 1994 using personal noise dosimeters. This data consisted of more than 42,000 full-shift samples.

TABLE 11.—M/NM DUAL-THRESHOLD NOISE SAMPLES EQUAL TO OR EXCEEDING SPECIFIED TWA_8 SOUND LEVELS—MARCH 1991 THROUGH DECEMBER 1994

TWA_8 sound level (in dBA)	90 dBA threshold		80 dBA threshold	
	Number of samples	Percent of samples	Number of samples	Percent of samples
90 (PEL)	7,360	17.4	.....	.....

TABLE 11.—M/NM DUAL-THRESHOLD NOISE SAMPLES EQUAL TO OR EXCEEDING SPECIFIED TWA_8 SOUND LEVELS—MARCH 1991 THROUGH DECEMBER 1994—Continued

TWA_8 sound level (in dBA)	90 dBA threshold		80 dBA threshold	
	Number of samples	Percent of samples	Number of samples	Percent of samples
85 (action level)	.....	.....	28,250	66.9

As indicated in Table 11, 17.4% of all samples collected by MSHA in metal and nonmetal mines during the specified period equaled or exceeded the permissible exposure level (a TWA_8 of 90 dBA using a 90-dBA threshold)—slightly less than the results of the inspectors' samplings in Table 9. Under the final rule feasible engineering and administrative controls are required to be implemented in such instances in all mines to reduce the noise exposure to the permissible exposure level. Furthermore, 67% of the samples in metal and nonmetal mines exceeded the action level (a TWA_8 of 85 dBA using an 80–dBA threshold).

MSHA's dual-threshold sampling data for coal mines is presented in Table 12. These data consist of over 4,200 full-shift samples collected from March 1991 through December 1995 using personal noise dosimeters.

TABLE 12.—COAL DUAL-THRESHOLD NOISE SAMPLES EQUAL TO OR EXCEEDING SPECIFIED TWA_8 SOUND LEVELS

[March 1991 Through December 1995]

TWA_8 sound level (in dBA)	90 dBA threshold		80 dBA threshold	
	Number of samples	Percent of samples	Number of samples	Percent of samples
90 (PEL)	1,075	25.3	.....	.....
85 (action level)	.....	.....	3,268	76.9

As indicated in Table 12, 25.3% of all samples collected by MSHA in coal mines during the specified period equaled or exceeded the permissible exposure level (a TWA_8 of 90 dBA using a 90-dBA threshold). Furthermore, almost 77% of the survey samples from the coal industry showed noise exposures equaling or exceeding a TWA_8 of 85 dBA using an 80–dBA threshold (the action level).

Tables 13 and 14 present some of the MSHA dual-threshold sampling data by occupation for the most frequently sampled occupations in metal and nonmetal and coal mines, respectively.

TABLE 13.—PERCENTAGE OF MSHA M/NM INSPECTOR NOISE SAMPLES EXCEEDING SPECIFIED TWA_8 SOUND LEVELS, BY SELECTED OCCUPATION †

Occupation	Number of samples	90 dBA threshold	80 dBA threshold
		Percent of samples >90 dBA (PEL)	Percent of samples ≥85 dBA (action level)
Front-End-Loader Operator	12,812	12.9	67.7
Truck Driver	6,216	13.1	73.7
Crusher Operator	5,357	19.9	65.1
Bulldozer Operator	1,440	50.7	86.2
Bagger	1,308	10.2	65.0
Sizing/Washing Plant Operator	1,246	13.2	59.7
Dredge/Barge Attendant	1,124	27.2	78.7
Clean-up Person	927	19.3	71.3
Dry Screen Operator	871	11.7	57.6
Utility Worker	846	12.4	60.6
Mechanic	761	3.8	43.9
Supervisors/Administrators	730	9.0	32.2
Laborer	642	17.1	65.7
Dragline Operator	583	34.0	82.5
Backhoe Operator	546	8.4	52.6
Dryer/Kiln Operator	517	10.5	55.5
Rotary Drill Operator (electric/hydraulic)	543	39.6	83.1
Rotary Drill Operator (pneumatic)	489	64.4	89.0

† These occupations comprise about 87 percent of the 42,206 MSHA dual-threshold samples collected at metal/nonmetal mines from March 1991 through December 1994 using a personal noise dosimeter over a miner's full shift

TABLE 14.—PERCENTAGE OF MSHA COAL INSPECTOR NOISE SAMPLES EXCEEDING SPECIFIED TWA_8 SOUND LEVELS, BY SELECTED OCCUPATION †

Occupation	Number of samples	90 dBA threshold	80 dBA threshold
		Percent of samples >90 dBA (PEL)	Percent of samples ≥85 dBA (action level)
Continuous Miner Helper	68	33.8	88.2
Continuous Miner Operator	262	49.6	96.2
Roof Bolter Operator (Single)	234	21.8	85.5
Roof Bolter Operator (Twin)	92	31.5	98.9
Shuttle Car Operator	260	13.5	78.5
Scoop Car Operator	94	18.1	74.5
Cutting Machine Operator	22	36.4	63.6
Headgate Operator	20	40.0	100.0
Longwall Operator	34	70.6	100.0
Jack Setter (Longwall)	25	32.0	68.0
Cleaning Plant Operator	107	36.4	77.6
Bulldozer Operator	225	48.9	94.2
Front-End-Loader Operator	244	16.0	76.6
Highwall Drill Operator	83	21.7	77.1
Refuse/Backfill Truck Driver	162	13.6	78.4
Coal Truck Driver	28	17.9	64.3

† These occupations comprise about 71 percent of the 4,247 MSHA dual-threshold samples collected at coal mine from March 1991 to December 1995 using a personal noise dosimeter over a miner's full shift

As shown in these tables, the percentage of miners exceeding the specified noise exposures varied greatly according to occupation. For example, Table 13 shows that only 8.4% of the backhoe operators in metal and nonmetal mines had noise exposures exceeding the permissible exposure level, while 64.4% of the pneumatic rotary drill operators had similar exposures. 52.6% of the backhoe operators and 89.0% of the pneumatic rotary drill operators would have noise exposures exceeding the action level.

Conclusion: Miners at Significant Risk of Material Impairment

MSHA has concluded that, despite many years under existing standards, noise exposures in all sectors of mining continue to pose a significant risk of material impairment to miners over a working lifetime. Specifically, MSHA estimates in the REA that 14% of coal miners (13,294 miners) will incur a material impairment of hearing under present exposure conditions.

Table 15 presents MSHA's profile of the projected number of miners currently subjected to a significant risk of developing a material impairment due to occupational noise-induced hearing loss under existing exposure conditions. The totals represent 13% of metal and nonmetal miners and 13.4% of miners as a whole.

TABLE 15.—PROJECTED NUMBER OF MINERS LIKELY TO INCUR NOISE-INDUCED HEARING IMPAIRMENT UNDER MSHA'S EXISTING STANDARDS AND EXPOSURE CONDITIONS

	<80 dBA	80–84.9 dBA	85–89.9 dBA	90–94.9 dBA	95–99.9 dBA	100–104.99 dBA	≥105 dBA	Total*
COAL	0	464	10,954	1,315	456	104	1	13,294
M/NM	0	1,091	15,472	6,030	1,002	48	0	23,643
Total*	0	1,555	26,426	7,345	1,458	152	1	36,937

* Includes contractor employees. Does not include office workers. Discrepancies are due to rounding.

MSHA promulgated noise standards for underground coal mines in 1971, for surface coal mines in 1972, and for metal and nonmetal mines in 1974. At that time, the Agency regarded compliance with the requirements as adequate to prevent the occurrence of noise-induced hearing loss in the mining industry. Since that time, however, there have been numerous awards of compensation for hearing loss among miners. Moreover, in light of MSHA's experience and that of other domestic and foreign regulatory agencies, as well as expert opinion on what constitutes an effective prevention program, the Agency's requirements are dated. NIOSH, for example, currently recommends a comprehensive program which includes the institution of a hearing conservation program to prevent noise-induced hearing loss, but MSHA's current standards do not include such protection.

Some commenters suggested that the existing standards adequately protect miners against noise-induced hearing loss and that MSHA over-estimates the hazard. However, the vast majority of the current scientific evidence demonstrates that noise-induced hearing loss constitutes a serious hazard to miners. MSHA's experience in enforcing its existing standards bears this out, necessitating the replacement of those standards with new ones that would provide additional protection to miners consistent with section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act), which states that MSHA's promulgation of health standards must:

* * * [A]dequately assure on the basis of the best available evidence that no miner will

suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on the numerous studies and MSHA's calculations and analysis presented above, the Agency has concluded that the new requirements in this rule are necessary to address the continued excess risk of material impairment due to occupational noise-induced hearing loss.

Compliance will reduce noise-induced hearing loss among miners, as well as the associated workers' compensation costs. The new rule provides the added benefit of making MSHA's noise rule consistent with OSHA's noise standard for general industry, as recommended by many commenters.

VI. Feasibility

Section 101(a)(6)(A) of the Mine Act requires the Secretary to set standards which most adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity over his or her working lifetime. Standards promulgated under this section must be based upon research, demonstrations, experiments, and such other information as may be appropriate. MSHA, in setting health standards, is required to achieve the highest degree of health and safety protection for the miner, and must consider the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

In relation to promulgating health standards, the legislative history of the Mine Act states that:

> This section further provides that ''other considerations'' in the setting of health standards are ''the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.'' While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated. However, as the circuit courts of appeals have recognized, occupational safety and health statutes should be viewed as ''technology-forcing'' legislation, and a proposed health standard should not be rejected as infeasible ''when the necessary technology looms in today's horizon''. *AFL–CIO* v. *Brennan*, 530 F.2d 109) (3d Cir. 1975); *Society of Plastics Industry* v. *OSHA*, 509 F.2d 1301 (2d Cir. 1975) cert. den. 427 U.S. 992 (1975).
>
> Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of [this section], the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure.
>
> S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977).

In *American Textile Manufacturers' Institute* v. *Donovan*, 452 U.S. 490, 508–509 (1981), the Supreme Court defined the word ''feasible'' as ''capable of being done, executed, or effected.'' The Court further stated, however, that a standard would not be considered economically feasible if an entire industry's competitive structure were threatened.

In promulgating standards, hard and precise predictions from agencies regarding feasibility are not required. The ''arbitrary and capricious test'' is usually applied to judicial review of rules issued in accordance with the Administrative Procedures Act. The legislative history of the Mine Act indicates that Congress explicitly intended the ''arbitrary and capricious test'' be applied to judicial review of mandatory MSHA standards. ''This test would require the reviewing court to scrutinize the Secretary's action to determine whether it was rational in light of the evidence before him and reasonably related to the law's purposes. * * *'' S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977). Thus,

MSHA need only base its predictions on reasonable inferences drawn from the existing facts. Accordingly, to establish the economic and technological feasibility of a new rule, an agency is required to produce a reasonable assessment of the likely range of costs that a new standard will have on an industry, and the agency must show that a reasonable probability exists that the typical firm in an industry will be able to develop and install controls that will meet the standard.

Technological Feasibility

MSHA has determined that a permissible exposure level of a TWA_8 of 90 dBA is technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA*, (AISI–II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA*, (AISI–I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dep't., AFL–CIO* v. *Hodgson*, 499 F.2d 467 (D.C. Cir. 1974). The Secretary may also impose a standard that requires protective equipment, such as respirators, if technology does not exist to lower exposure to safe levels. See *United Steelworkers of America, AFL–CIO–CLC* v. *Marshall*, 647 F.2d 1189, 1266 (D.C. Cir. 1981).

The Agency has vast experience in working with the mining community in continually refining and improving existing noise control technology. At the request of MSHA's Coal Mine Safety and Health or Metal and Nonmetal Mine Safety and Health, MSHA's Technical Support staff actively assists mine operators in developing effective noise controls. Based on this experience, the Agency has concluded that there are few circumstances in mining where such controls do not exist.

MSHA acknowledges that some mining equipment historically has presented technological feasibility challenges for the mining industry. However, MSHA has evaluated, under actual mining conditions, newly developed noise controls for surface self-propelled equipment, underground diesel-powered haulage equipment, jumbo drills, track drills, hand-held percussive drills, draglines/shovels, portable crushers, channel burners, and mills, and has found them to be effective in producing a significant reduction in a miner's noise exposure. Some of these feasible engineering controls are already designed into new equipment. In many cases, effective and feasible controls are available through retrofitting or the proper use of noise barriers.

Several commenters in the metal and nonmetal sector of the mining industry expressed concern regarding the technological and economic feasibility of controls for their particular operations. In Volume IV of MSHA's Program Policy Manual, which covers an interpretation, application, and guidelines on enforcement of MSHA's existing noise standards in metal and nonmetal mines, the Agency includes a list of feasible noise engineering controls for the major classifications of equipment used in the metal and nonmetal mining industry. The Agency intends to continue applying its existing guidelines on enforcement of the permissible exposure level in the final rule because the permissible exposure level is unchanged from the existing standards. MSHA, therefore, encourages mine operators to use this list so they will be knowledgeable of available noise control technology.

Acoustically Treated Cabs

For mining equipment such as haul trucks, front-end-loaders, bulldozers, track drills, and underground jumbo drills, acoustically treated cabs are among the most effective noise controls. Such cabs are widely available, both from the original equipment manufacturer and the manufacturers of retrofit cabs, for machines manufactured within the past 25 years. Today, most manufacturers include an acoustically treated cab as part of the standard equipment on the newest pieces of mobile mining equipment. The noise reduction of factory-installed, acoustically treated cabs is generally more effective and often less costly than that of retrofit cabs. According to some manufacturers, sound levels at the machine operator's position inside factory cabs are often below 90 dBA and, in some cases, below 85 dBA.

Additionally, environmentally controlled operator's cabs have the added advantages of reducing dust exposure, heat stress, and ergonomic-related hazards.

Occasionally, underground mining conditions are such that full-sized surface haulage equipment can be used. Where this is possible, such equipment can be equipped with a cab as described above.

These engineering noise controls are not new technology. The former United States Bureau of Mines (USBM) published two manuals entitled ''Bulldozer Noise Controls'' (1980) and ''Front-End Loader Noise Controls'' (1981) which describe in detail installations of retrofit cabs and acoustical materials.

Barrier Shields

For some equipment, generally over 25 years old, an environmental cab may not be available from the original equipment manufacturer or from manufacturers of retrofit cabs. In such cases, a partial barrier with selective placement of acoustical material can usually be installed at nominal cost to block the noise reaching the equipment operator. These techniques are demonstrated in ''Bulldozer Noise Controls'' (1980).

Barrier shields and partial enclosures can also be used on track drills where full cabs are infeasible. Such shields and enclosures can be either freestanding or attached to the drill. Typically, however, they are not as effective as cabs and usually do not reduce the miner's noise exposure to the TWA_8 of 90 dBA permissible exposure level. This barrier can be constructed at minimal cost from used conveyor belting and other materials found at the mine site.

Exhaust Mufflers

Diesel-powered machinery can be equipped with an effective exhaust muffler in addition to an environmental cab or barrier shield. The muffler's exhaust pipe can be relocated away from the equipment operator and the emissions can be redirected away from the operator. For underground mining equipment, exhaust mufflers are ordinarily not needed where water scrubbers are used. A water scrubber offers some noise reduction, but the addition of an exhaust muffler may create excessive back pressure or interfere with the proper functioning of the scrubber. Exhaust mufflers can, however, be installed on underground equipment where catalytic converters are used.

Exhaust mufflers can also be installed on pneumatically powered equipment. For example, exhaust mufflers are offered by the manufacturers of almost every jackleg drill, chipping hammer, and jack hammer. In the few cases where such exhaust mufflers are not available from the original equipment manufacturer, they can be easily constructed by the mine operator. MSHA has a videotape available to the mining community showing the construction of such an exhaust muffler for a jackleg drill. This muffler can be constructed at minimal cost from a section of rubber motorcycle tire.

Acoustical Materials

Various types of acoustical materials can be strategically used for blocking, absorbing, and/or damping sound and vibration. Damping vibration reduces the generated sound field. Generally such materials are installed on the inside walls of equipment cabs or operator compartments, and in control rooms and booths. Barrier and absorptive materials can be used to reduce noise emanating from the engine and transmission compartments, and acoustical material can be applied to the firewall between the employee and transmission compartment. Noise reduction varies depending upon the specific application. Care must be taken to use acoustical materials that will not create a fire hazard or emit toxic fumes if exposed to heat.

Control Rooms and Booths

Acoustically treated control rooms and booths are frequently used in mills, processing plants, or at portable operations to protect miners from noise created by crushing, screening, or processing equipment. Such control rooms and booths are typically successful in reducing exposures of employees working in them to below 85 dBA.

In addition, remote controlled video cameras can be used to provide visual observation of screens, crushing equipment, or processing equipment, minimizing the need for a miner to be near these loud noise sources.

Substitution of Equipment

In the few cases where sound levels are particularly severe and neither retrofit nor factory controls are available, the equipment may need to be replaced with a type that produces less noise. For example, hand-held channel burners were used for many years in the mining industry to cut granite in dimension stone quarries. Sound levels typically exceeded 120 dBA at the operator's ear. Several years ago, however, alternative and quieter methods of cutting granite, such as high pressure water jet technology, automated channel burners, and diamond wire saws, were developed in the dimension stone industry. Dimension stone operators were notified by MSHA of the availability of these alternatives and given time to phase out the use of diesel-fueled, hand-held burners and replace them with one of the quieter and more protective alternatives.

New Equipment Design

Hand-held channel burners can be replaced with automated channel burners supplied with liquid oxygen. The automated design does not require the operator to be near the channel burner, thereby using distance to attenuate the noise.

The MSHA document entitled, ''Summary of Noise Controls for Mining Machinery,'' (Marraccini et al., 1986) provides case histories of effective noise controls installed on specific makes and models of mining equipment. The case histories describe the controls used, their cost, and the amount of noise reduction achieved. In particular, these include engineering noise control methods for coal cutting equipment, longwall equipment, conveyors, and diesel equipment. Underground coal mining equipment may require some unique noise controls. However, for coal extracting machines such as continuous miners and longwall shearers, the use of remote control is the single most effective noise control. The installation of noise damping materials and enclosure of motors and gear cases can be used to aid in controlling noise of coal transporting equipment such as conveyors and belt systems. Diesel

equipment used underground can be equipped with controls similar to those used on surface equipment. Mufflers, sound controlled cabs, and barriers will provide much of the needed noise control for this type of equipment. MSHA has found that the controls utilized in these specific cases can be extended to other pieces of mining equipment. The Agency is currently updating this publication, and plans to reissue it at a later date in order to assist mine operators in complying with the requirements of the final rule.

Economic Feasibility

MSHA has determined that a permissible exposure level of a TWA_8 of 90 dBA is economically feasible for the mining industry. Economic feasibility does not guarantee the continued existence of individual employers. It would not be inconsistent with the Act to have a company which turned a profit by lagging behind the rest of an industry in providing for the health and safety of its workers to consequently find itself financially unable to comply with a new standard; see, *United Steelworkers,* 647 F.2d at 1265. Although it was not Congress' intent to protect workers by putting their employers out of business, the increase in production costs or the decrease in profits would not be enough to strike down a standard. *Industrial Union Dep't.,* 499 F.2d at 477. Conversely, a standard would not be considered economically feasible if an entire industry's competitive structure were threatened. *Id.* at 478; see also, *AISI–II,* 939 F.2d at 980; *United Steelworkers,* 647 F.2d at 1264–65; *AISI–I,* 577 F.2d at 835–36. This would be of particular concern in the case of foreign competition, if American companies were unable to compete with imports or substitute products. The cost to government and the public, adequacy of supply, questions of employment, and utilization of energy may all be considered.

MSHA has determined that retention of the existing permissible exposure level, threshold, and exchange rate under the final standard would not result in any incremental costs for engineering controls for the metal and nonmetal sector and would result in annualized costs of $1.6 million for the coal mining sector. As described in more detail in the Agency's final Regulatory Economic Analysis, MSHA evaluated various engineering controls and their related costs.

In determining which engineering controls the metal and nonmetal industry will have to use under the final rule, MSHA considered the engineering controls that are used under the current rule. MSHA expects that there will be no significant change because the requirements for meeting the permissible exposure level are the same. For the coal industry, however, MSHA expects the cost to differ significantly. Under the current coal standards, personal hearing protectors have typically been substituted for engineering and administrative controls; therefore, the industry has not exhausted the use of feasible controls capable of significantly reducing sound levels. Accordingly, the coal sector is projected to experience relatively higher costs for engineering controls under the final rule than the metal and nonmetal sector.

MSHA believes the requirements for engineering and administrative controls clearly meet the feasibility requirements of the Mine Act, its legislative history, and related case law. The most convincing evidence that the final rule will be economically feasible for the mining industry as a whole is the fact that the total cost of the final rule borne by the mining industry, $8.7 million annually, is only 0.01 percent of annual industry revenues of approximately $59.7 billion. Nevertheless, MSHA recognizes that, in a few cases, individual mine operators, particularly small operators, may have difficulty in achieving full compliance with the final rule immediately because of a lack of financial resources to purchase and install engineering controls. However, ultimate compliance with the final rule is expected to be achieved.

Whether controls are feasible for individual mine operators is based in part upon legal guidance from the Federal Mine Safety and Health Review Commission (Commission). According to the Commission, a control is feasible when it: (1) Reduces exposure; (2) is economically achievable; and (3) is technologically achievable. See *Secretary of Labor* v. *A.H. Smith,* 6 FMSHRC 199 (1984); *Secretary of Labor* v. *Callanan Industries, Inc.,* 5 FMSHRC 1900 (1983).

In determining the technological feasibility of an engineering control, the Commission has ruled that a control is deemed achievable if, through reasonable application of existing products, devices, or work methods, with human skills and abilities, a workable engineering control can be applied to the noise source. The control does not have to be ''off-the-shelf,'' but it must have a realistic basis in present technical capabilities.

In determining the economic feasibility of an engineering control, the Commission has ruled that MSHA must assess whether the costs of the control are disproportionate to the ''expected benefits,'' and whether the costs are so great that it is irrational to require its use to achieve those results. The Commission has expressly stated that cost-benefit analysis is unnecessary in order to determine whether a noise control is required.

Consistent with Commission case law, MSHA considers three factors in determining whether engineering controls are feasible at a particular mine: (1) The nature and extent of the overexposure; (2) the demonstrated effectiveness of available technology; and (3) whether the committed resources are wholly out of proportion to the expected results. A violation under the final standard would entail MSHA determining that a miner has been overexposed, that controls are feasible, and that the mine operator failed to install or maintain such controls. According to the Commission, an engineering control may be feasible even though it fails to reduce exposure to permissible levels contained in the standard, as long as there is a significant reduction in a miner's exposure. *Todilto Exploration and Development Corporation* v. *Secretary of Labor,* 5 FMSHRC 1894, 1897 (1983). MSHA intends to continue its longstanding policy of determining that a control is feasible where a control or a combination of controls could achieve a 3-dBA noise reduction, which represents at least a 50% reduction in sound energy. Where any single control does not provide at least a 3-dBA noise reduction, mine operators must consider the reduction achieved by a combination of all available controls.

Some commenters were uncertain as to whether MSHA's policy referred to a 3-dBA reduction in sound level or a 3-dBA reduction in a miner's noise exposure. Exposure and sound level are not synonymous terms because an exposure includes a time factor. MSHA has determined that a 3-dBA reduction in a miner's exposure is the relevant factor in determining feasibility. This is true because the permissible exposure level is a personal exposure standard, which can be controlled using engineering and administrative controls. MSHA chose a 3-dBA reduction because accuracy of the current noise measurement instrumentation is 2 dBA, a control would not be deemed effective until the measured reduction exceeds the accuracy of the instrumentation. The 3-dBA reduction in a miner's exposure is different from and should not be confused with the discussion of the exchange rate in this preamble.

The Agency is cognizant that there may be instances where all feasible engineering and administrative controls have been used and a miner's noise exposure cannot be reduced to the permissible exposure level. Under those circumstances, in both the coal and metal and nonmetal sectors, MSHA intends to enforce the final rule consistent with its current p code policy for metal and nonmetal mines.

Currently, when MSHA issues a citation for a noise overexposure, the operator must use all feasible engineering and administrative controls to bring noise exposures within the permissible level. Under current MSHA policy where feasible engineering or administrative controls have failed to lower noise exposures to a permissible level at a metal or nonmetal mine, the citation may be terminated on the condition that personal protective equipment is provided and worn. This type of termination, referred to as a ''P'' code, is permitted after certain procedures have been followed.

If the District Manager where the citation was issued believes a ''P'' code is warranted, the Manager reviews the situation in consultation with field enforcement staff, headquarters officials, and MSHA technical experts. This review includes an evaluation of the circumstances surrounding the overexposure, with particular emphasis on assessing the feasibility and effectiveness of control options.

If the reviewers determine that a ''P'' code is appropriate, the citation will be terminated and the termination will state the minimum acceptable performance requirements for hearing protectors, and the minimum acceptable engineering and administrative controls that must be used in conjunction with the hearing protectors. After a ''P'' code has been issued, MSHA provides the National Institute for Occupational Safety and Health (NIOSH) a copy of the associated technical documentation to alert researchers of the specific instances of noise overexposures where noise exposures cannot be reduced to permissible levels using feasible engineering or and administrative controls. SHA considers both technological capabilities and the economic impact of a control.

MSHA regularly reviews those instances where ''P'' codes have been issued to determine whether conditions have changed or new technology is available to warrant reconsidering the justification for the ''P'' code. MSHA may withdraw the ''P'' code if the original justification for the ''P'' code is no longer valid. The decision may be based on such factors as a change in operating conditions, new technology, or failure of the mine operator to comply with the specified control measures.

VII. Section-by-Section Analysis

Section 62.100 Purpose and Scope; Effective Date

The purpose of the mandatory health standard established in part 62 is to prevent the occurrence and reduce the progression of occupational noise-induced hearing loss among miners in every surface and underground metal, nonmetal, and coal mine subject to the Federal Mine Safety and Health Act of 1977.

The final rule establishes a single uniform noise standard applicable to all mines. Most commenters favored the one-rule format, agreeing with the Agency that consolidation and simplification of the existing multiple standards may help to facilitate understanding of, and thus compliance with, regulatory requirements.

Prior to this final rule, MSHA had four sets of noise standards: for surface metal and nonmetal mines (30 CFR 56.5050), for underground metal and nonmetal mines (30 CFR 57.5050), for underground coal mines (30 CFR part 70, subpart F), and for surface coal mines and surface work areas of underground coal mines (30 CFR part 71, subpart I). The surface and underground noise standards for metal and nonmetal mines were identical, and the surface and underground noise standards for coal mines were nearly identical.

MSHA was influenced by several factors in deciding to promulgate this final rule: the prevalence of hearing loss among miners despite experience with the current standard, conditions in the mining industry, MSHA's review of the latest scientific information, the comments submitted in response to the proposed rule, and the requirements of the Mine Act.

The rule contains provisions that are consistent with many of OSHA's requirements yet tailored to meet the specific needs of the mining community. In addition, many of the provisions are similar, if not identical, to the existing MSHA noise standards, which will allow for continuity in the transition to the new rule.

The final rule takes effect one year after the date of publication. MSHA recognizes that successful implementation of the final rule requires training of MSHA personnel and guidance to miners and mine operators, particularly small mine operators. Therefore, in response to several supportive comments, the Agency has decided that this delayed effective date best meets the needs of the mining community.

Section 62.101 Definitions

The definitions discussed below are included in the final rule to facilitate understanding of technical terms that are used in this part. Some of the proposed definitions have been revised to be consistent with the common usage of such terms. For example, the Agency's proposed use of the term ''supplemental baseline audiogram'' has been changed to the more commonly used ''revised baseline audiogram.''

The final rule also includes a definition for action level. MSHA moved the definition of action level from the text of the proposed rule and included it in the definition section of the final rule to be consistent with the terms permissible exposure level and dual hearing protection level which are in the definition section. In addition, on the suggestion of several commenters who expressed confusion over the use of the proposed term ''designated representative,'' MSHA has not adopted this term in the final rule, but instead has substituted the term ''miner's designee.'' Also, because no commenter supported MSHA's proposed definition of a ''hearing conservation program,'' that definition has not been adopted in the final rule. In its place, MSHA is incorporating the elements of a traditional hearing conservation program into the text of the final rule.

Several commenters requested that MSHA provide a definition for ''feasible'' engineering and administrative controls, indicating that the term is vague and subject to varying interpretations. Because of the performance-oriented nature of the requirements for the use of engineering and administrative controls, MSHA has refrained from including an explicit definition of this term. Rather, MSHA notes in the discussion under ''Feasibility'' (Part VI of this preamble), that it follows the Federal Mine Safety and Health Review Commission case law as to what constitutes a feasible noise control for enforcement purposes. MSHA further notes in that discussion that it will provide additional guidance in a companion compliance guide to this final rule.

A few comments were received regarding MSHA's use of non-standard terminology and abbreviations in the proposal, in particular, the use of the terms ''decibel A-weighted,'' ''dBA,'' and ''sound level (in dBA).'' MSHA intends for the terminology used throughout this rule to be both

technically correct and readily understood. Therefore, for technical accuracy and consistency with usage in the mining community for the past 25 years, the Agency is deleting the definition of the term ''decibel A-weighted'' and is rephrasing the definition of the term ''sound level.''

The following is a summary of some of the key features of the definitions that are used in the final rule along with a discussion of the comments that the Agency received in response to the proposal.

Access is the right to examine and copy records. MSHA is adopting the definition from the proposal, which is consistent with the term used in several of MSHA's and OSHA's existing health standards. In response to commenters who requested that MSHA include a ''no cost'' provision in this definition, MSHA notes that such a provision is included in the specific section in which it would be applicable. The term ''access'' is discussed further under § 62.190, regarding records.

Action level is an 8-hour time-weighted average sound level (TWA_8) of 85 dBA, or equivalently a dose of 50%, integrating all sound levels from 80 dBA to at least 130 dBA. The action level is discussed further under § 62.120 of the preamble.

Audiologist is a professional specializing in the study and rehabilitation of hearing and who is certified by the American Speech-Language-Hearing Association or is licensed by a state board of examiners. The vast majority of commenters indicated no preference for further restrictions to MSHA's proposed definition, which is identical to that used by OSHA in its occupational noise standard.

Some commenters, however, believed that the definition of ''audiologist'' should specifically require certification by the American Speech-Language Hearing Association (ASHA), as evidenced by a Certificate of Clinical Competence. Other commenters supported a proviso being added to the definition of ''audiologist'' that state licensing requirements guarantee that the licensees are as competent as those certified by ASHA. The rationale for this comment was that state licensing boards vary significantly from state to state, and licensing requirements in some states are not as stringent as ASHA certification requirements.

The final rule does not adopt the suggestion of commenters that the final rule accept licensing by only those states whose licensing standards are sufficiently rigorous, because although some state licensing requirements are more stringent than others, even the least rigorous of the state requirements will provide an acceptable level of competence for audiologists. The final rule adopts the requirement that audiologists hold an ASHA certification or a license from a state board of examiners, which is consistent with MSHA's determination that such a certification or license is essential to the implementation of an effective hearing conservation program. Properly trained and certified audiologists are qualified to conduct audiometric testing, evaluate audiograms, and supervise technicians who conduct and evaluate audiograms.

The licensing requirements for audiologists in the final rule are also consistent with similar requirements in OSHA's noise standard. The term ''audiologist'' is discussed further under § 62.170 of the preamble regarding audiometric testing.

Baseline audiogram is the audiogram, recorded in accordance with § 62.170 of this part, against which subsequent audiograms are compared to determine the extent of hearing loss, except in those situations in which this part requires the use of a revised baseline audiogram for such a purpose. With the exception of the term ''revised,'' which replaces the term ''supplemental,'' the definition of baseline audiogram is unchanged from the proposal. The baseline audiogram establishes a reference for making hearing loss determinations.

Although many commenters favored the proposal, others believed that a true baseline, by definition, is conducted prior to exposure to noise. MSHA notes that the final rule explicitly allows mine operators to use existing audiograms as the baseline, provided that they were taken under the conditions meeting the testing requirements of this rule. For the final rule, the Agency concludes that the reasons discussed in the preamble to the proposal remain valid. There MSHA discussed the importance of the testing requirements that are to be followed in conducting the baseline audiogram, as it is the reference against which subsequent audiograms are to be compared. If the baseline audiogram is not conducted properly, it will not truly reflect the miner's hearing thresholds. As a result, any changes between the baseline and subsequent tests may be masked. Accordingly, MSHA is adopting the proposed definition.

The definition of baseline audiogram also includes the provision that hearing loss determinations may require the use of a ''revised'' baseline under specific circumstances. Those circumstances are noted in the further discussion of baseline audiogram and audiometric testing under § 62.170(a) of the final rule.

Criterion level refers to the sound level which, if applied for 8 hours, results in 100% of the dose permitted by the standard. The definition remains unchanged from the proposal. Under § 62.110(b)(2)(iv) of the final rule, the criterion level is a sound level of 90 dBA. If applied for 8 hours, this sound level will result in a dose of 100% of the permissible exposure level (PEL), established by § 62.130 as an 8-hour time-weighted average (TWA_8) of 90 dBA. The criterion level is a constant. On the other hand, the permissible exposure level is a sound level of 90 dBA for 8 hours or a sound level of 95 dBA for 4 hours. Further discussion is provided under § 62.110(b)(2)(iv) of the preamble regarding dose determination.

Decibel (dB) is a unit of measure of sound pressure levels. It is defined in the final rule in one of two ways, depending upon the use. The proposed definition remains unchanged; it continues to include definitions for measuring sound pressure levels and for measuring hearing threshold levels:

(1) For measuring sound pressure levels, the decibel is 20 times the common logarithm of the ratio of the measured sound pressure to the standard reference sound pressure of 20 micropascals (μPa), which is the threshold of normal hearing sensitivity at 1000 Hertz; and

(2) For measuring hearing threshold levels, the decibel is the difference between audiometric zero (reference pressure equal to 0 hearing threshold level) and the threshold of hearing of the individual being tested at each test frequency.

Dual Hearing Protection Level is a TWA_8 of 105 dBA, or equivalently, a dose of 800% of that permitted by the standard, integrating all sound levels from 90 dBA to at least 140 dBA. In the proposal, the definition was included within the dual hearing protection requirement itself. The term is set forth as a definition in the final rule for the sake of clarity.

Exchange rate is the amount of increase in sound level, in decibels, which would result in reducing the allowable exposure time by half in order to maintain the same noise dose. In response to a comment which requested clarification of this definition, MSHA has added language to the final rule which states that for purposes of this part, the exchange rate is 5 decibels (5 dB). In the final rule, a 5-dB increase or decrease in the sound level corresponds to a halving or doubling of the allowable exposure time. Thus, a 5-dB increase, from 90 dBA to 95 dBA, would result

in halving the allowable exposure time from 8 hours to 4 hours, and a 5-dB decrease, from 100 dBA to 95 dBA, would result in doubling the allowable exposure time from 2 hours to 4 hours. Exchange rate is discussed further under § 62.110(b)(2)(iv), regarding dose determination.

Hearing protector refers to any device or material, capable of being worn on the head or in the ear canal, sold wholly or in part on the basis of its ability to reduce the level of sound entering the ear, and which bears a scientifically accepted indicator of noise reduction value. The proposed definition remains unchanged in the final rule. Although one commenter suggested that the phrase ''sold wholly or in part on the basis of its ability to reduce the level of sound'' be deleted from this definition because a hearing protector's effectiveness cannot be reliably determined on the basis of the intended purpose for which it is sold, MSHA's definition follows the Environmental Protection Agency's (EPA) labeling standards for hearing protectors (40 CFR § 211.203(m)). Under the EPA labeling standards, a hearing protector is defined as:

> * * * any device or material, capable of being worn on the head or in the ear canal, that is sold wholly or in part on the basis of its ability to reduce the level of sound entering the ear.
>
> This includes devices of which hearing protection may not be the primary function, but which are nonetheless sold partially as providing hearing protection to the user.

Accordingly, MSHA is adopting the proposed definition. As a result, not all devices or materials that are inserted in or that cover the ear to reduce the noise exposure qualify as a hearing protector under the final rule. For example, a hearing aid or cotton does not qualify as an acceptable hearing protector under the final rule.

Although several commenters agreed with the proposal that the hearing protector should be required to have a scientifically accepted indicator of noise reduction value, other commenters suggested that MSHA's definition specifically include the manufacturer's noise reduction rating (NRR) or a requirement that the attenuation be measured according to standards of the American National Standards Institute (ANSI). Since EPA requires that all hearing protector manufacturers include labeling information indicating a noise reduction rating, a hearing protector bearing such a label would indicate to a mine operator that it meets MSHA's definition of a hearing protector.

However, MSHA is not limiting the range of hearing protectors only to those with a noise reduction rating. MSHA noted in the preamble to the proposed rule that the noise reduction ratings do not reflect actual reductions in noise in workplace situations. Moreover, other organizations have recommended that the EPA reconsider its rating system. Therefore, MSHA is adopting the language in the proposed definition which permits any scientifically accepted indicator of noise reduction value. Further discussion of noise reduction ratings is located under § 62.110(b)(2)(i), regarding noise exposure assessment.

Hertz (Hz) is the international unit of frequency, equal to cycles per second. The definition has been changed from the proposal. One commenter suggested that stating the range of audible frequencies for humans with normal hearing is superfluous to a definition for hertz. MSHA agrees, and the reference has not been adopted in the final rule.

Medical pathology is a condition or disease affecting the ear. The definition of medical pathology remains unchanged from the proposal. A few commenters suggested that the definition be reworded. The term, which is also used in OSHA's occupational noise standard, is adopted in MSHA's final rule for use in contexts which do not require actual diagnosis and treatment, but which may ultimately be diagnosed and treated by a physician. The Agency intends that ear injuries be included as a condition or disease affecting the ear. Medical pathology is discussed further in the preamble sections addressing § 62.160(a)(5), regarding hearing protectors, § 62.172(b)(1), regarding evaluation of audiograms, and § 62.173(a) and (b), regarding follow-up evaluation when the audiogram is invalid.

Miner's designee is any individual or organization to whom a miner gives written authorization to exercise the miner's right of access to records. This definition is new to the final rule. MSHA received several comments to the proposal's use of the term ''designated representative,'' which caused confusion with the term ''representative of miners'' in 30 CFR § 40.1(b). MSHA intended that the two terms have distinct meanings. Accordingly, for clarification, MSHA has replaced the proposed term with the new term, ''miner's designee.'' Further discussion of the term ''miner's designee'' is found under § 62.190(b), regarding records.

Permissible exposure level is a TWA_8 of 90 dBA or equivalently a dose of 100% of that permitted by the standard, integrating all sound levels from 90 dBA to at least 140 dBA. No miner shall be exposed during any work shift to noise that exceeds the permissible exposure level. The permissible exposure level is discussed further under § 62.130 of the preamble.

Qualified technician is a person who has been certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC) or by another recognized organization offering equivalent certification. The proposed definition remains unchanged in the final rule.

Several commenters suggested additional requirements while other commenters favored less restrictive requirements for the qualified technician: some commenters did not agree with the proposed requirement that a qualified technician be certified by the Council for Accreditation in Occupational Hearing Conservation or by another recognized organization offering equivalent certification. Several commenters recommended that MSHA adopt the requirements for technicians in the OSHA noise rule, which allows physicians and audiologists discretion to judge the qualifications of technicians. A number of commenters advocated that the final rule be consistent with the OSHA noise standard and exempt technicians who operate microprocessor audiometers from any certification requirement. This was based on the commenters' views that a properly trained technician, under the direction of a physician or an audiologist, would have the competence to perform the tests. These commenters believed that a requirement for certification by CAOHC or an equivalent body would unnecessarily limit the flexibility of mine operators in testing employees, and could result in fewer tests being conducted. One commenter stated that the final rule should require CAOHC certification as the minimum qualification for audiometric technicians, and not accept certifications by other organizations, pointing out that CAOHC is currently the only organization that currently issues such certifications.

MSHA has concluded that a certification requirement for audiometric technicians is not overly restrictive, and it ensures the necessary level of knowledge and proficiency to perform audiometric tests under the final rule. MSHA has also concluded that certifications from organizations other than CAOHC are acceptable, provided that the organization imposes equivalent requirements. Contrary to the statements of some commenters, CAOHC is not the only organization that issues such certifications—the U.S. armed forces train technicians to

perform audiometric tests and issues certifications. Such certifications would be accepted under the final rule.

The final rule also adopts the proposed requirement that technicians who operate microprocessor audiometers have CAOHC or equivalent certification, to ensure that these technicians demonstrate the same level of proficiency as those technicians who operate manual audiometers. Although microprocessor audiometers may be easier to operate than manual audiometers, MSHA has concluded that a certification requirement is still appropriate for technicians who operate this equipment. MSHA's final rule, unlike OSHA's noise standard, does not include detailed procedural requirements for audiometric testing. Instead, the training and expertise of the individuals conducting tests is an essential element of an effective audiometric testing program. For these reasons, MSHA has chosen not to exempt technicians who operate microprocessor audiometers from the certification requirements in the final rule. Further, the requirement for CAOHC or equivalent certification is not overly burdensome on the mining industry, as 19,000 technicians currently hold this qualification due to OSHA's requirement for CAOHC certification. The 19,000 CAOHC technicians are located around the country.

The requirements for audiometric technicians in the final rule are similar to requirements in regulations of the U.S. Army, Air Force, and Navy, which require the technician to be CAOHC-certified or certified through equivalent military medical training and be under the supervision of a physician or audiologist. Qualified technicians are further discussed under § 62.170, regarding audiometric testing and § 62.172(a)(2), regarding evaluation of audiograms.

Reportable hearing loss is a change in hearing sensitivity for the worse, relative to the miner's baseline audiogram or a revised baseline audiogram established in accordance with § 62.170(c)(2), of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear. The definition of reportable hearing loss remains essentially unchanged from the proposal, with the exception that the proposal's reference to ''supplemental baseline audiogram'' has been replaced with ''revised baseline audiogram.''

Under the final rule, reportable hearing loss is calculated by subtracting the current hearing levels from those on the baseline audiogram at 2000, 3000, and 4000 Hz and may be corrected for age. When the permanent hearing loss at all three frequencies is averaged, the hearing loss must be reported if the average loss in either ear is 25 dB or greater. In making this calculation, a revised baseline would be established and used where there has been a significant improvement in hearing sensitivity, in accordance with the provisions of § 62.170(c)(2).

MSHA is adopting the proposed definition of reportable hearing loss—the extent of hearing loss that must be reported to the Agency pursuant to § 62.175(b) of the final rule. Some commenters who were satisfied with the proposed 25-dB level for reporting a hearing loss expressed concern that the proposed requirement does not discriminate between occupational and non-occupational hearing loss. Other commenters favored a lower, 10 dB or 15 dB, hearing loss for reportability purposes because the proposed 25-dB hearing loss level permits too much damage to occur before reporting is required. Still other commenters recommended that a hearing loss should be reportable only if it is the subject of a workers' compensation award. These commenters believed that workers' compensation data would make good reporting criteria and also noted that the accuracy of the reported data could be confirmed with state workers' compensation agencies. Additionally, the complex calculations currently necessary for determining whether a reportable hearing loss has occurred could be avoided.

MSHA's definition of a reportable hearing loss represents a substantial loss of hearing, which would provide a reliable indication of the effectiveness of the intervention strategies of the mining industry. The requirement is consistent with the existing OSHA noise standard which requires any 25-dB loss to be recorded in an employer's records. In addition, § 62.175(b) of the final rule, which is identical to § 62.190 of the proposal, creates an exception for reportable hearing loss when a physician or audiologist has determined that the loss is neither work-related nor aggravated by occupational noise exposure. Furthermore, workers' compensation reporting criteria, which are controlled by the states and varies from state to state, may produce inconsistent reporting to MSHA, depending upon the state criteria that are being applied. Further discussion of reportable hearing loss is provided under § 62.175(b), regarding the notification of audiometric test results and reporting requirements.

Revised baseline audiogram is an annual audiogram designated, as a result of the circumstances set forth in § 62.170(c)(1) or (c)(2), to be used in lieu of the baseline audiogram in measuring changes in hearing sensitivity. With the exception of the clarifying change in terms from ''supplemental'' baseline audiogram to ''revised'' baseline audiogram, the definition in the final rule remains unchanged from the proposal. Use of the term ''revised'' is consistent with the OSHA noise standard. Some commenters suggested using the term ''reference'' baseline audiogram, however; MSHA believes that less confusion will result by adopting the term used by OSHA. In addition, for further clarity and accuracy, MSHA is replacing the proposed reference to hearing ''acuity'' with hearing ''sensitivity.'' Further discussion of a revised baseline audiogram is provided under § 62.170(c), in addition to the related discussions on reportable hearing loss and standard threshold shift.

Sound level is the sound pressure level in decibels, measured using the A-weighting network and a slow response. The final definition is essentially unchanged from the proposal but is reworded for accuracy. Sound consists of pressure changes in air caused by vibrations. These pressure changes produce waves that move out from the vibrating source. The sound level is a measure of the amplitude of these pressure changes and is generally perceived as loudness. For the purpose of this rule, the sound level is expressed in the unit ''dBA.''

Under § 62.110(b)(2)(v) of the final rule, sound pressure levels would be measured using the A-weighting network and the slow response. A-weighting refers to the frequency response network closely corresponding to the frequency response of the human ear. This network reduces sound energy in the upper and lower frequencies (less than 1000 and greater than 5000 Hz) and slightly amplifies sound energy between the frequencies of 1000 and 5000 Hz. The slow-response time refers to the slow exponential-time-averaging characteristic. The specifications of the A-weighting network and the slow-response time are found in ANSI S1.25–1991, ''Specification for Personal Noise Dosimeters,'' and ANSI S1.4–1983, ''American National Standard Specification for Sound Level Meters.''

A few commenters were concerned that MSHA's abbreviation ''dBA'' was technically incorrect, because it is the sound level that is A-weighted, not the decibel. MSHA recognizes that there are several scientific fields employing distinct acoustical terminology,

including noise-control engineering, mining engineering and industrial hygiene. A term that is conventional or commonly accepted in one field may not be accepted in another. Because the abbreviation ''dBA'' has come to be a widely accepted way of succinctly denoting a sound level that is A-weighted and because the majority of the mining community has used this terminology over the past 25 years and did not voice any opposition, MSHA has adopted the proposed abbreviation ''dBA'' in the final rule. Further discussion of the A-weighting and slow response time are provided under § 62.110(b)(v), regarding noise exposure assessment.

Standard threshold shift is a change in hearing sensitivity for the worse relative to a miner's baseline audiogram or relative to the most recent revised audiogram, where one has been established. The hearing loss is calculated by subtracting the current hearing levels from those measured by the baseline or revised baseline audiogram at 2000, 3000, and 4000 Hz, and, optionally, correcting for age. A standard threshold shift is defined as when the average loss in either ear has reached 10 dB. The proposal is essentially unchanged, except that the term ''sensitivity'' has replaced the term ''acuity.''

OSHA defines a standard threshold shift in essentially the same way and requires that an employee's annual audiogram be compared to his or her baseline audiogram to determine if the annual audiogram is valid and if a standard threshold shift has developed.

NIOSH (1995) recommends that the criteria for a standard threshold shift be a 15–dB decrease in hearing sensitivity at any one of the audiometric test frequencies from 500 to 6000 Hz on two sequential audiograms. The shift in hearing sensitivity must be in the same ear. NIOSH believes this criteria is sufficiently stringent to detect developing hearing loss while excluding normal variability in workers' hearing sensitivity. NIOSH's previous (1972) criteria defined standard threshold shift as a change of 10 dB or more at 500, 1000, 2000 or 3000 Hz; or 15 dB or more at 4000 or 6000 Hz.

MSHA's definition of standard threshold shift in the final rule will identify individuals suffering shifts as large as 30 dB at 4000 Hz with no shifts at the lower frequencies. This permits the early identification of individuals at risk, so that corrective measures may be instituted. For example, there are some instances where significant threshold shifts in hearing level occur at higher test frequencies (4000 and 6000 Hz) with little or no change in hearing level at the middle frequencies. While such large shifts are uncommon, they may occur in noise-sensitive individuals, especially in the early stages of noise-induced hearing loss.

Many commenters voiced concern that any hearing loss would be considered a result of occupational noise exposure. These commenters believed that many non-occupational causes could produce a hearing loss and that MSHA should recognize such non-occupational origins of hearing loss. As stated elsewhere in this preamble, MSHA leaves it to the professional judgement of medical and technical personnel to determine, through interviewing and thorough examination, whether the origin of hearing loss is occupational or non-occupational.

MSHA believes, after considering the relevant factors and reviewing current U.S. armed forces and international standards, that the definition of a standard threshold shift in the final rule is the most appropriate. Further discussion is provided under § 62.172, regarding the evaluation of audiograms.

Time-weighted average-8 hour (TWA_8) is the sound level which, if constant over 8 hours, would result in the noise dose measured. The proposed definition remains unchanged in the final rule. This value is used in the final rule in connection with various limits; for example, the permissible exposure level is a TWA_8 of 90 dBA and the action level is a TWA_8 of 85 dBA.

Not all noise-measurement instruments provide readouts in terms of an 8-hour time-weighted average. Personal noise dosimeters, for example, measure noise as a percentage of permitted dosage, with the permissible exposure level equated to 100%. Noise dose may be converted, in accordance with § 62.110 of the final rule, to an equivalent TWA_8 to determine if the action level or the permissible exposure level has been exceeded and to evaluate the impact of engineering and administrative controls. Accordingly, MSHA has provided a list of TWA_8 conversion values in Table 62–2 of the final rule, based on a criterion level of 90 dBA for 8 hours.

Noise exposure must be determined for the entire shift, but regardless of the length of the work shift, a determination of noncompliance with the noise standard will be based upon exceeding 100% exposure and the TWA_8 (and a 5-dB exchange rate). It would thus be improper to adjust a TWA_8 reading for an extended work shift.

Section 62.110 Noise Exposure Assessment

The requirements of § 62.110 of the final rule have been adopted from both the proposal and supplemental proposal to include in one section all provisions that address mine operators' assessment and evaluation of miners' noise exposures. The provisions of this section of the final rule include the requirements that mine operators:

(1) Establish a system to monitor miners' noise exposures;

(2) Evaluate each miner's noise exposure to determine continuing compliance with this part;

(3) Provide affected miners and their representatives the opportunity to observe noise exposure monitoring; and

(4) Notify miners when their noise exposure equals or exceeds certain limits set by this final rule.

The provisions of this section are similar to provisions in § 62.120(a) and (f) of the proposal and § 62.120(g) of the supplemental proposal. The final rule, like the proposal, requires the mine operator to establish a system of monitoring to evaluate each miner's noise exposure. The monitoring requirement establishes specific goals for a mine operator's monitoring system, including:

(1) Determining if miners' noise exposures reach any of the limits established by this final rule;

(2) Assessing the effectiveness of the engineering and administrative noise controls in place;

(3) Identifying areas of the mine where the use of hearing protectors is required; and

(4) Ensuring that the noise exposure information necessary for proper evaluation of miners' audiograms is furnished to audiometric test providers.

The rule is flexible, that is, it does not prescribe how the mine operator will accomplish the goals it sets, but rather leaves it to the mine operator to determine the best means by which to achieve those goals.

Like the supplemental proposal, the final rule requires the mine operator to give prior notice to affected miners and their representatives of the date and time of exposure monitoring by the mine operator, and to provide miners and their representatives the opportunity to observe such monitoring.

The final rule also requires that the mine operator notify miners in a timely manner if their noise exposures reach the levels specified. This ensures that miners are aware that they have been exposed to excessive noise and may encourage them to use the hearing protectors provided by the mine

operator and participate in the audiometric testing program provided by the mine operator. Miners must also be notified of the corrective action taken if their exposures exceed the permissible exposure level.

System of Monitoring

Paragraph (a) of § 62.110 of the final rule requires mine operators to establish a system of monitoring that evaluates each miner's noise exposure sufficiently to determine continuing compliance with all aspects of the final rule. The final rule, like the proposal, takes a performance-oriented approach, and neither the methodology nor the intervals of monitoring are specified. Under § 62.120(f) of the proposed rule, mine operators would have been required to establish a system of monitoring ''which effectively evaluates each miner's noise exposure.''

Despite a number of commenters who questioned the need for monitoring by the mine operator, MSHA has determined that operator monitoring is needed to identify those miners who are subjected to noise exposures that may be injurious to their hearing, so that protective measures can be implemented. Most commenters supported the need for monitoring and favored a performance-oriented approach, but some suggested a detailed specification-oriented monitoring program similar to the program previously applicable to coal mines. Those commenters questioned how MSHA would evaluate ''an effective system of monitoring,'' urging MSHA to define this term. Other commenters questioned mine operators' ability to conduct reliable noise exposure monitoring.

MSHA intends to evaluate the effectiveness of mine operators' monitoring programs by how well the programs achieve the specified goals. During mine inspections, MSHA will continue to evaluate miners' noise exposures. Overexposures may indicate deficiencies in the mine operator's noise monitoring program, and may result in close scrutiny of the program by MSHA. In view of the wide variety of mining operations to which the final rule applies, MSHA has concluded that the establishment of rigid and specific monitoring requirements would be unnecessarily inflexible and stifle innovation and improvements in monitoring technology. The test of whether the monitoring system is effective is how well the monitoring system protects miners. Thus, a monitoring program which meets the specified goals will be considered effective under the final rule.

Another concern of commenters was the proposed requirement that mine operators establish a system of monitoring which ''effectively evaluates each miner's noise exposure.'' These commenters expressed concern that this provision could place an undue burden on mine operators. Many of these commenters suggested that monitoring areas of the mine, representative job tasks, or similar occupations would be sufficient to meet the intent of the rule. A few commenters suggested that monitoring should occur only when information exists that a miner's noise exposure equals or exceeds the action level. According to one commenter, because a mine operator's insurance carrier may conduct noise exposure monitoring, monitoring by the mine operator would not be necessary.

In response to these commenters, the language of this section of the final rule has been reworded to provide that the mine operator must establish a system of monitoring that ''evaluates each miner's noise exposure sufficiently to determine continuing compliance with this part.'' This reflects the intent of both the proposal and the final rule, and does not require that each miner be individually evaluated for noise exposure, provided that the established monitoring system serves to detect individual miner exposures equaling or exceeding the specified levels in the final rule. As noted by commenters, depending upon the circumstances, monitoring of areas of the mine or representative job tasks may provide a mine operator with sufficient information to determine compliance with the final rule. Regardless of the system of monitoring that a mine operator implements, mine operators continue to be fully responsible for ensuring that no miner is exposed to noise above permissible limits, and for ensuring that the required corrective actions are taken if a miner's noise exposure equals or exceeds the action level or exceeds the permissible exposure level or the dual hearing protection level. As indicated in the preamble to the proposed rule, a mine operator could use results of MSHA sampling or information from equipment manufacturers on the sound levels produced by their equipment in determining compliance with this rule. Additionally, as suggested by one commenter, a mine operator could also consider the results of other sampling, such as sampling conducted by an insurance carrier, in determining compliance. It would nonetheless benefit mine operators to determine miners' noise exposure using a personal noise dosimeter or the formula included in paragraph (b) of this section of the final rule.

Determination of Dose

Paragraphs (b)(1) and (b)(2) of § 62.110 of the final rule include requirements for determining a miner's noise dose. These requirements are essentially the same as those in § 62.120(a) of the proposal. They contain several revisions in language to accommodate the changes in the threshold and range of integration for the permissible exposure level and dual hearing protection level. Additionally, the final rule, unlike the proposal, specifically refers to the use of personal noise dosimeters in determining a miner's noise dose. Finally, the final rule does not adopt the term ''miner's noise exposure measurement'' used in the proposal, but instead substitutes the term ''miner's noise dose determination'' to be consistent with the flexible and performance-oriented approach taken by the final rule. This change in terminology reflects the fact that mine operators may choose to determine a miner's noise dose and comply with the requirements of the final rule without taking an actual, physical measurement of a miner's personal noise exposure.

Paragraph (b)(1) of § 62.110 provides that a miner's noise dose may be determined in one of two ways:

(1) Through the use of a personal noise dosimeter; or

(2) When sound levels and corresponding exposure times are known, the dose is computed using the specified formula.

In order to use the formula, it is necessary to know the distribution of sound levels and exposure times throughout the work shift. Table 62–1 provides reference durations for the sound levels to be used in the calculation of dose, and Table 62–2 addresses converting from dose readings to equivalent TWA_8 values.

The ratios of the actual exposure times to the reference duration for each specified sound level equal to or exceeding the threshold (lower bound on the integration range) are summed and expressed as a percentage of the permitted standard. A reference duration is the time over which a miner, exposed at the associated sound level, receives 100% of the permissible noise dose. The reference duration for an 80-dBA sound level was added to the table in the final rule to reflect the use of the 80-dBA threshold for the determination of conformance with the action level, and is consistent with OSHA's noise standard.

Formula for Computing a Miner's Noise Exposure

If a sound level meter is used, corresponding discrete exposure times for each sound level are determined, and the formula established in this section is used to compute the miner's noise exposure. A personal noise dosimeter automatically computes a miner's noise exposure in the same manner as the formula does for readings taken with a sound level meter over the entire measurement period.

Like the proposal, the final rule includes Table 62–1, which lists incremental sound levels and their associated reference durations. The table in the final rule differs from the table included in the proposal because the sound levels that must be integrated into the noise exposure determination under the final rule are different than they would have been under the proposal for the permissible exposure level and the dual hearing protection level (see §§ 62.120, 62.130, and 62.140). These sound levels are essentially the same as those shown in Table G–16a in the OSHA noise standard, except that values above 115 dBA are excluded.

Although sound levels in excess of 115 dBA are not shown in Table 62–1, they are to be integrated into the noise exposure determination. However, inclusion of these values in Table 62–1 might lead the reader to erroneously infer that a miner is permitted to be exposed to sound at such levels, contrary to § 62.130(c) of the final rule, which prohibits the exposure of miners to sound levels exceeding 115 dBA. To avoid any such confusion, Table 62–1 has not been expanded to include the corresponding reference durations for sound levels greater than 115 dBA. Additionally, the Table includes the notation that at no time must any excursion exceed 115 dBA. MSHA notes that, in any case, the reference durations for sound levels that are not in the table can be calculated in accordance with the formula in the table's note. Further, discussion of the range of sound levels that are integrated into a miner's noise dose is included under § 62.110(b)(2), regarding range of integration.

Conversion From Dose to TWA_8

Table 62–2 is provided to allow conversion of the dose (percent) to the equivalent eight-hour time-weighted average (TWA_8). The requirements of paragraph (b)(1) have been adopted unchanged from § 62.120(a)(2) of the proposal. However, the full shift over which the dose determination is made may be shorter or longer than 8 hours. Thus, the table is included because it provides an easy reference for converting the noise dose expressed as a percentage of the permissible exposures to the corresponding TWA_8.

MSHA noted in the preamble to the proposed rule that the TWA_8 and the dose are to be used interchangeably, and that the TWA_8 is not to be adjusted for extended work shifts, because the criterion level is based on eight hours. Noise exposures must reflect the entire shift in order to determine compliance with the final rule. If the noise dose exceeds 100 percent, regardless of the length of the work shift, the miner will be considered to be overexposed to noise. MSHA requested that commenters provide suggestions to help the Agency ensure that its intent is clearly conveyed in this final rule, but received no additional comments. The Agency provides the following additional guidance. If a miner's noise dose exceeds 800 percent, regardless of the length of the work shift, the miner will be considered to be exposed above the dual hearing protection level. If a miner's noise dose equals or exceeds a TWA_8 of 85 dBA, regardless of the length of the work shift, the miner will be considered to be exposed above the action level. Since the action level and permissible exposure level are determined using 80-dBA and 90-dBA thresholds, respectively, the noise dose using the 90-dBA threshold will always be lower or equal to the noise dose using the 80-dBA threshold.

Table 62–2 has been constructed by equating the permissible exposure level to a dose of 100 percent (criterion level of a TWA_8 of 90 dBA). More specifically, the TWA_8 conversion values in Table 62–2 are based on the use of a 90-dBA criterion level and a 5-dB exchange rate. Interpolation for values not found in this table can be determined using the following formula:

$TWA_8 = 16.61 \log_{10} (D/100) + 90$,

where D is the dose. Table 62–2 can be used to determine the equivalent TWA_8 from the percent noise dose. The conversion is made from dose in percent to TWA_8, regardless of the work shift time, and compared to the action level (TWA_8 of 85 dBA), the permissible exposure level (TWA_8 of 90 dBA), or dual hearing protection level (TWA_8 of 105 dBA). Some models of personal noise dosimeters will provide readings in both the percent dose and TWA_8, and in such cases the conversion table would not be needed.

MSHA notes here, as it did in the preamble to the proposal, that noise exposure is interpreted as if averaged over 8 hours. For example, a dose of 200 percent is equivalent to a TWA_8 of 95 dBA, whether it is collected for 4 hours, 8 hours, or 12 hours, and would indicate noncompliance with the permissible exposure level. A miner working only 5 or 6 hours can be exposed to higher sound levels during those hours than during an 8-hour shift. Thus, although exposure at 95 dBA is not permitted for 8 hours, exposure at that level would be permitted for a 4-hour work shift. Conversely, if a miner works a shift longer than 8 hours, the sound levels would need to be lower. Thus, although exposure at 90 dBA is permitted for 8 hours, it is not permitted for a 10-hour work shift. In this way, the conversion of percent dose to TWA_8 simplifies compliance determination.

Paragraph (b)(2) of this section (1) prohibits adjustments of dose determinations for the use of hearing protectors; (2) specifies the minimum range of sound levels that must be included in a miner's noise dose determination; (3) requires that the dose determination reflect the miner's full shift; (4) requires the use of a 90–dB criterion level and a 5–dB exchange rate; and (5) requires the use of an A-weighting and slow response instrument setting.

Noise Reduction Ratings

Section 62.110(b)(2)(i) of the final rule remains unchanged from § 62.120(a)(3)(i) of the proposal and requires that a miner's noise exposure be determined without adjusting for the use of any hearing protector. MSHA chose not to require the use of any method to determine the effectiveness of hearing protectors. Similarly, the Agency also chose not to provide for any scheme for the use or derating of the noise reduction rating (NRR) currently determined by manufacturers for hearing protectors based on laboratory testing under Environmental Protection Agency (EPA) regulations at 40 CFR §§ 211.201 through 211.214. The noise reduction rating is an estimate of the noise reduction achievable under optimal conditions and was designed to be used with C-weighted sound levels. EPA regulations require every hearing protector manufactured for distribution in the United States to bear a label that includes the protector's noise reduction rating.

Several commenters supported this aspect of the proposal, and agreed that the noise reduction provided by a hearing protector worn by a miner should not be considered in determining the miner's noise exposure. They believed the noise should be controlled by using engineering methods, rather than by relying on

miners to wear hearing protectors. These commenters observed that under MSHA's existing enforcement policy for coal mining, in many cases, once adjustment is made for hearing protector use when determining compliance, previously installed engineering noise controls are not maintained. Other commenters stated that the EPA noise reduction rating is a poor predictor of field performance; still others were of the opinion that the noise reduction of hearing protectors should be determined for individual wearers, not using average values such as the EPA noise reduction ratings.

On the other hand, many other commenters believed that some consideration of the noise reduction value of a hearing protector is called for in determining noncompliance. Some of these commenters stated that the EPA noise reduction rating is a scientifically accepted indicator of noise reduction value and should be retained. A number of those commenters believed that hearing protectors could be used effectively and were the most cost-effective method to achieve compliance with the rule. Other commenters recommended that hearing protectors be rated using methods recommended by the National Hearing Conservation Association, while others stated that the NIOSH method of adjusting hearing protector ratings should be used. Both of these methods are discussed below.

Several commenters provided audiometric data from their hearing conservation programs, claiming that the data showed that hearing protectors adequately protect the hearing sensitivity of miners. As discussed earlier, the NIOSH (Franks) analysis of the two databases cited by MSHA and the three analyses conducted by Clark and Bohl under the auspices of the National Mining Association indicate that miners are developing hearing loss of a degree that constitutes material impairment. The differences in the conclusions of these studies are largely attributable to different attributes of the control groups, *i.e.* prior noise exposure or the existence of otological abnormalities (which generally results in poor hearing), which were used in the studies. As noted earlier in the preamble, Franks' analysis used a non-noise exposed population and the audiograms of miners who had experienced otological abnormalities were screened out. Clark and Bohl, however, used a population that could have had an occupational noise exposure or an otological abnormality. Because of the different baselines, the conclusions reached by Clark and Bohl are different from those reached by Franks regarding the magnitude of the hearing losses exhibited by miners. In any event, although the analyses arrive at different conclusions, all of these analyses indicate that some miners are developing varying degrees of a material impairment of hearing. Additionally, these analyses do not support the conclusion that a hearing conservation program that relies primarily or exclusively on the use of hearing protectors effectively protects all miners from noise-induced occupational hearing loss. The Agency also notes that it has examined data submitted by mine operators in accordance with the Agency's notification regulations under 30 CFR Part 50. This data shows that a number of miners have incurred a hearing loss despite the use of hearing protectors.

Other studies and data were submitted by TU Services, Rochester Group, Kerr-McGee Coal Corporation, and BHP Minerals Inc., in support of their position that a hearing conservation program that relies primarily or solely on the use of hearing protectors can adequately protect miners' hearing. However, all these studies lack sufficient data to allow such a conclusion to be drawn because no information has been provided that indicates the miners' history of noise exposure; the history of the use of hearing protectors; the type of hearing protectors used or the circumstances of use; and what type, if any, of engineering or administrative controls that may have been implemented. In addition, the data or studies lacked information on employment history and training history. Also, no details of the audiometric testing procedures were provided to the Agency. One study submitted by Kerr-McGee used an internal control to which the hearing of miners were compared. However, the noise exposure of the control group was not indicated. Because of the lack of such essential information for all the raw data or studies submitted to the Agency, it is impossible for MSHA to determine with any degree of certainty the level of effectiveness of any hearing protectors that may have been used, and as a result to give any of these studies significant weight in the development of the final rule. Moreover data by BHP and the Rochester Group showed the rates for a standard threshold shift (STS) to be unacceptably high, in excess of 5% (BHP had a 7% rate and the Rochester Group had a 6.6% STS rate in 1996 and a 7.9% STS rate between 1988 and 1997).

Some commenters recommended a requirement for NIOSH Method No. 1, which uses the spectrum of the noise and the attenuation of the hearing protector at individual frequencies to estimate the sound level beneath the hearing protector. Other commenters stated their belief that mine operators lack the sophistication to use this method. The NIOSH Method No. 1 requires the use of advanced instrumentation and MSHA believes that few mine operators would have the expensive instruments. In addition, because noise in mining is almost constantly changing its frequency, content, or sound level, many measurements of individual noises will need to be conducted before an appropriate hearing protector could be recommended.

In its *Compendium of Hearing Protection Devices* (1994), NIOSH compares several sets of laboratory-measured noise reduction values (obtained using various standardized methods), including the noise reduction rating. NIOSH lists the noise reduction of various hearing protectors estimated by these various methods. Also, listed are the physical attributes, composition, and compatibility with other personal safety equipment of the hearing protectors.

NIOSH (1995) recommends a rating adjustment scheme based on the type of hearing protector, resulting in the following field-adjusted ratings:

(1) Earmuffs—75% of the noise reduction rating;

(2) Formable earplugs—50% of the noise reduction rating; and

(3) All other earplugs—30% of the noise reduction rating.

The National Hearing Conservation Association's Task Force on Hearing Protector Effectiveness (Royster, 1995) recommends that the EPA's noise reduction rating be replaced with a noise reduction rating-subject fit, or NRR(SF). According to the researchers, the NRR(SF) more realistically reflects the field performance of hearing protectors. The noise reduction rating-subject fit is determined by laboratory testing after a person fits the hearing protector to his or her head. This differs from EPA's noise reduction rating, which is determined after a researcher fits the hearing protector to the person. Both are averages for general populations, but the noise reduction rating-subject fit is more realistic because it more closely approximates field conditions by having the user insert or put on the hearing protection device. The Task Force also recommends continued audiometric testing whenever hearing protectors are used.

MSHA notes that the American Industrial Hygiene Association (AIHA,

1995) requested that EPA revise its noise rule on noise labeling requirements for hearing protectors. The reasons given for this request included:

(1) The current method of rating hearing protectors overestimates the actual workplace protection by 140 to almost 2000 percent.

(2) Absolute levels of protection from labeled values cannot be predicted.

(3) The labeled values are a poor predictor of relative performance of one hearing protector versus another.

(4) There are no provisions for retesting the hearing protectors on a recurring basis.

(5) There is no requirement for quality assessment or accreditation of the test laboratory.

Despite the fact that OSHA's noise standard includes methods to estimate the effectiveness of hearing protectors, MSHA has concluded that there is no scientific consensus regarding the method that should be used to determine the noise reduction of a hearing protector.

Many field studies have been conducted on the effectiveness of hearing protectors in the mining industry. With one exception, these studies report that hearing protectors, whether old or new, provide much less noise reduction than was measured in the laboratory. In many instances, noise reduction was minimal and highly variable, indicating that hearing protector effectiveness cannot be reliably predicted under actual use conditions and is substantially less than that indicated by the noise reduction rating of the manufacturer. These studies are summarized below.

Durkt (1993) studied the effectiveness of 11 models of new earmuffs using miniature microphones inside and outside the ear cups. A total of 107 tests were conducted at surface mines on operators of equipment that included bulldozers, front-end-loaders, and overburden drills. When the noise spectrum included significant amounts of low frequency noise, the measured noise reduction was much less than the noise reduction rating. This is relevant in mining because most diesel-powered equipment, including the machines used at the surface mines, generate noise primarily in the low frequency range.

Kogut and Goff (1994) studied the effectiveness of earmuffs being used in surface and underground mines. A total of 540 miners were tested wearing their normal earmuffs. The procedure was similar, but not identical, to the procedure used by Durkt (1993). Like Durkt, the researchers concluded the noise reduction provided by earmuffs was related to the spectrum of the noise. According to the researchers, ''The earmuffs' effectiveness in reducing noise exhibited great variability and frequently fell far short of the NRR.'' The researchers did develop a method for predicting the effectiveness of earmuffs, but it is complex as well as impractical.

Giardino and Durkt (1996) and Giardino and Durkt (1994) expanded on the two previously discussed studies. A total of 1,265 tests were performed on 545 distinct machines of 20 different types. According to the researchers, earmuffs provided minimal noise reduction for operators of equipment powered by internal combustion engines. They concluded that the noise reduction rating was a poor predictor of earmuff performance under actual mining conditions.

Bertrand and Zeiden (1993), the exception noted above, determined the effectiveness of hearing protectors by measuring the hearing levels of miners exposed to sound levels exceeding 115 dBA. They found that, although the hearing protectors provided less noise reduction than their ratings indicated, the difference was not significant. For example, miners exposed to 118 dBA experienced hearing levels consistent with exposure to 98 dBA, indicating that the hearing protector rated at 24 dBA provided 20 dBA of noise reduction.

Several research studies performed in other industries by Pfeiffer (1992), Hempstock and Hill (1990), Green et al. (1989), Behar (1985), Lempert and Edwards (1983), Crawford and Nozza (1981), and Regan (1975) also indicate that hearing protector effectiveness is substantially less than the noise reduction rating indicated by the manufacturer.

Other findings by these researchers sometimes conflict with one or more of the others, underscoring the logic of MSHA's decision not to mandate any rating adjustment system at this time:

Regan (1975) found that earmuff-type protectors provide the most noise reduction and custom molded earplugs the least.

Behar (1985) found that the measured noise reduction rating in industrial settings averaged 14.9 dB lower and reached 25 dB lower than the manufacturer's rated value.

Green et al. (1989) report workers who used earplugs and were receiving one-third to one-half of the laboratory-based noise reduction rating value, and workers enrolled in an effective hearing conservation program obtain greater noise reduction from their hearing protectors.

Crawford and Nozza (1981) report that the average noise reduction of the earplugs was typically 50% of the manufacturer's values, except for user-molded earplugs, whose actual noise reduction in the field was near the laboratory values.

Lempert and Edwards (1983) report that, in the majority of cases, workers received less than one-half of the potential noise reduction of earplugs. They conclude that regardless of the type of earplug used at a facility, a large portion of the workers obtained little or no noise reduction.

Hempstock and Hill (1990) report that the workplace performance of earmuffs more closely approximated the laboratory performance than earplugs. For both earmuffs and earplugs, the measured workplace noise reductions were lower and the standard deviations higher than those measured in the laboratory. The researchers attribute these results to the ease of fitting an earmuff compared to fitting an earplug. Their study also revealed that the decrease in effectiveness was dependent upon the model of hearing protector and even differed between sites; safety glasses substantially degraded the performance of earmuffs; workers wearing safety glasses received approximately one-half of the laboratory noise reduction.

Royster et al. (1996) also found that personal protective equipment such as hard hats and safety glasses worn by miners may affect the noise reduction of hearing protectors. In their study, wearing safety glasses reduced the noise reduction of earmuffs by about 5 dB at all frequencies.

Pfeiffer (1992) surveyed studies of hearing protector effectiveness in German industry, and reports that at industrial sites, earplugs provided between 10 and 15 dB less noise reduction, and earmuffs about 6 dB less, than they did in the laboratory. In another part of the study, used but not defective earmuffs were tested against new ones. The used earmuffs provided significantly less noise reduction than new ones. The decrease in reduction depended on the model and frequency tested, exceeding 7 dB for some frequencies.

Abel and Rokas (1986) report that the noise reduction of earplugs decreases with wearing time, and that head and jaw movement accelerate the decline. Cluff (1989) investigated the effect of jaw movement on the noise reduction provided by earplugs and determined that the change in reduction depended on the type of earplug. Self-expanding viscose foam earplugs retained more of

their noise reduction ability than multi-flanged or glass-fiber earplugs.

At Noise-Con 81, Berger (1981) concluded that the performance of hearing protectors decreased with wearing time. Kasden and D'Aniello (1976, 1978) found that custom molded earplugs retained their noise reduction after three hours of use during normal activity, but typical earplug performance decreased after three hours of use. Krutt and Mazor (1980) report that the noise reduction of mineral down earplugs decreases over a three-hour period of wear, but the noise reduction of expandable foam earplugs does not. Casali and Grenell (1989) tested the effect of activity on the noise reduction provided by an earmuff and found that there was significant decrease only at 125 Hz and that the noise reduction was highly dependent on the fit.

Royster and Royster (1990) report that the noise reduction rating cannot be used to determine or even rank the field effectiveness of hearing protectors. They found that two individuals, using the same model of hearing protector, can obtain vastly different levels of noise reduction. They conclude that ''Products that are more goof-proof (earmuffs and foam earplugs) provided higher real-world attenuation than other HPDs [hearing protection devices].''

Casali and Park (1992) report that the noise reduction at 500 or 1000 Hz showed a high correlation with the overall noise reduction of hearing protectors. Therefore, they believe, models can be developed to predict the overall reduction of hearing protectors based upon the measured reduction at a single frequency, eliminating the need to adjust the noise reduction rating to accurately reflect noise reduction in the field. Casali and Park also believe that this model could be used to fit hearing protectors objectively.

Berger (1992), in ''Field Effectiveness and Physical Characteristics of Hearing Protectors,'' reports on the progress of the American National Standards Institute (ANSI) Working Group S12/WG11, which is charged with developing a laboratory methodology of rating hearing protectors that reflects the noise reduction obtained by workers in the field. Berger also summarizes the results of 16 studies involving over 2,600 subjects on the field performance of hearing protectors. Earplug field ratings averaged about 25% of the published U.S. laboratory ratings (ranging from 6% to 52%) and earmuff reduction rates averaged about 60% of the laboratory rates (ranging from 33% to 74%).

Royster et al. (1996) also report on the progress of the American National Standards Institute Working Group that has developed a methodology that reflects the reduction achieved by workers in a well managed hearing conservation program, and is in the process of drafting an ANSI standard around it. While testing their methodology, the researchers concluded that because some test subjects could not properly insert an earplug by simply reading the manufacturer's instructions, these instructions may be inadequate.

As summarized above, many researchers have compared the results of standardized methods of measuring the noise reduction of hearing protectors in a laboratory setting to estimated or measured field reductions. Researchers have yet to develop a standardized test for measuring the noise reduction of hearing protectors in the field. In general, commenters concurred with MSHA's preliminary conclusion in the proposal that, while methods exist to measure the noise reduction provided to an individual by a hearing protector, none of these methods has been standardized or shown to be effective in field usage or applies equally to all types of hearing protectors. This makes it virtually impossible to accurately predict in any systematic way the in-mine effectiveness of hearing protectors in reducing noise exposures for individual miners.

In addition to the studies that have been summarized above, MSHA has reviewed the procedures for exposure measurement in regulations and codes of practice (mandatory or recommended) of OSHA, selected branches of the U. S. armed services, international communities, the International Standards Organization, American National Standards Institute, and the American Conference of Governmental Industrial Hygienists. A variety of methods are used by these organizations, but nearly all of the entities either specify or imply that noise reduction provided by hearing protectors should not be considered in determining a worker's noise exposure.

Accordingly, based on the rulemaking record, and consistent with OSHA's noise standard, the final rule adopts the proposed requirement that a miner's noise dose be measured or computed without regard to any noise reduction provided by the use of personal hearing protectors. This is consistent with MSHA's determination that there are other factors that may be as important or even more important than a hearing protector's noise reduction in ensuring that a miner is protected from occupational noise-induced hearing loss. These factors include comfort, training, fit, maintenance, and consistent use. Because engineering and administrative controls are more reliable and measurable, they must be the first line of defense in reducing noise exposures. This fact does not, however, diminish the usefulness of hearing protectors as part of a continuing and effective hearing conservation program. In recognition of the role played by hearing protectors in a hearing conservation program, MSHA will provide guidance to the mining community in estimating the adequacy of hearing protectors as applied to individuals in the form of a compliance guide that will be issued after the publication of the final rule.

Range of Integration

Section 62.110(b)(2)(ii) of the final rule requires the integration of all sound levels over the appropriate range in determining a miner's noise dose. Under the proposal, the range of integration for the action level, the permissible exposure level, and the dual hearing protection level would have been from 80 to 130 dBA. The ''range of integration'' means the level at which the dosimeter starts recognizing the sound level and counting it to the sound level where the dosimeter stops counting. Unlike the proposal, the final rule establishes dual thresholds: § 62.120 of the final rule sets the range of integration for the action level from 80 to at least 130 dBA, while the range of integration for both the permissible exposure level and the dual hearing protection level is from 90 to at least 140 dBA (§§ 62.130(a) and 62.140). To accommodate the dual thresholds, the language of the final rule has been revised to require the ''appropriate range'' of integration of sound levels, rather than specifying the range of integration set forth in the proposed rule for all dose determinations.

The term ''all sound levels'' in the final rule includes, but is not limited to, continuous, intermittent, fluctuating, impulse, and impact noises. A discussion of impulse and impact noise is provided at the end of this section.

Dual Thresholds

Many commenters urged MSHA to develop a rule consistent with the OSHA noise standard, which requires an 80-dBA threshold for the action level and a 90-dBA threshold for the permissible exposure level. Some commenters, however, supported the proposed 80-dBA threshold for both the action level and permissible exposure level. Also, a few commenters requested that MSHA adopt a threshold of 85 dBA

for the permissible exposure level, while other commenters recommended that MSHA retain the 90-dBA threshold used under MSHA's existing noise standards, believing that sound levels less than 90 dBA were not hazardous and that an 80-dBA threshold for compliance with the permissible exposure level would merely increase the number of citations without significantly benefitting the miners.

MSHA has concluded that the adoption of a dual threshold in the final rule is protective and will decrease a miner's risk of developing noise-induced hearing loss. In not adopting the proposed 80-dBA threshold for both the permissible exposure level and the action level, MSHA is not ignoring the scientific evidence, noted in Part V, *Material Impairment*, which demonstrates that there is a risk of hearing loss from exposure to sound levels at or above 80 dBA. The Agency addressed the risk of hearing impairment from prolonged exposure above 80 dBA in the preamble to the proposed rule. However, MSHA concludes that the dual thresholds in the final rule will protect miners against noise-induced hearing loss which occurs at those sound levels, primarily because the final rule incorporates significant changes to the proposed hearing conservation program.

MSHA has concluded that the protection provided by the final rule adequately addresses the risk of noise-induced hearing loss which occurs at exposures between a TWA_8 of 85 dBA and a TWA_8 of 90 dBA. Under the final rule, mine operators are required to implement a system of monitoring that evaluates each miner's noise exposure sufficiently to determine compliance with part 62. All sound levels ranging from 80 to at least 130 dBA must be integrated to determine whether a miner's noise exposure equals or exceeds a TWA_8 of 85 dBA—the action level. Mine operators are required to enroll miners whose noise exposure equals or exceeds the action level into a hearing conservation program. Under the hearing conservation program, mine operators are required to provide enrolled miners with hearing protectors, audiometric testing, and training, all in accordance with specific requirements.

Commenters noted that, in addition to being protective, a dual threshold is workable. Many mine operators are currently using personal noise dosimeters with dual threshold capability for measuring noise exposures. Some commenters, familiar with both OSHA and MSHA regulations, recommend thatMSHA require measuring a worker's noise exposure using dual thresholds in order to be consistent with OSHA. Nearly all personal noise dosimeters currently being manufactured have variable threshold settings that facilitate the collection of noise exposures using two different thresholds. Some older personal noise dosimeters that lack the capability of dual thresholds but which have been used to measure a miner's noise exposure under MSHA's existing noise regulations—may be somewhat obsolete, but can still be used to make a noise exposure measurement to determine conformance with either the action level or the permissible exposure level. They simply cannot do both simultaneously. Additionally, some of the older instruments may not be capable of integrating the required range of sound under the final rule, and will need to be replaced.

Impulse/Impact Noise

As noted above, § 62.110(b)(2)(ii) of the final rule requires that ''all sound levels,'' including impulse and impact noise, be integrated into a miner's noise dose determination. Impulse noise sources, such as gunshots, or impact noise sources, such as a sledge hammer striking metal, result in high sound pressure levels being generated almost instantaneously. These sources are hazardous because their duration is so short that the protective mechanisms of the ear do not have sufficient time to react. The final rule, like the proposal, does not include a separate provision for impulse or impact noise.

In the preamble to the proposed rule, MSHA discussed in depth the many factors it considered in determining the merit of proposing an impulse/impact noise limit for the mining industry. Although there is evidence in the literature on the harmful effects of impulse/impact noise, MSHA concluded that, currently, there is insufficient scientific consensus to support a separate impulse/impact noise standard. Further, existing procedures for identifying and measuring such sounds lack the practicality to enable its effective measurement. This is due, in part, to the complexity of the phenomena, where consideration must be given to such technical factors as the peak sound pressure level, the shape of the wave form, the number of impulses per day, the presence or absence of steady-state (background) sound, the frequency spectrum of the sound, and the protective effect of the middle ear acoustic reflex.

As discussed in Part V, *Material Impairment*, when impulse/impact noise is combined with continuous noise, hearing loss is exacerbated. Because industrial impulse noises are almost always superimposed on a background of moderate-to-high levels of continuous noise, and because both can be harmful, it is reasonable to consider their combined effect, rather than to treat each separately. MSHA has therefore concluded, and the final rule reflects, that impulse/impact noise must be combined with continuous noise when a miner's noise exposure is determined. This is consistent with provisions in OSHA's noise standard.

MSHA has received comments on whether impulse and impact noise can be accurately integrated into determining a miner's noise dose. The studies cited by these commenters pre-dated the new ANSI S1.25–1991 ''American National Standard Specification for Personal Noise Dosimeters.'' Personal noise dosimeters meeting this standard cover the ranges of sound levels that are to be integrated into a miner's noise dose under §§ 62.120, 62.130(a), and 62.140 and accurately integrate impulse and impact noise into a worker's noise exposure.

MSHA received comments in response to its request for data addressing a critical level to prevent a traumatic hearing loss. A critical level is one which causes immediate and irreparable damage to the hearing mechanism. The comments received dealt primarily with impulse and impact noise as it pertained to the proposed ceiling level of 115 dBA, and these comments are therefore addressed under § 62.130 of this preamble.

Full Work Shift

Section 62.110(b)(2)(iii) of the final rule has been adopted with some changes from proposed § 62.120(a)(3)(ii), and requires that a miner's noise dose determination reflect the miner's full work shift. Under the proposed rule, a miner's noise exposure measurement would have been required to integrate all sound levels from 80 dBA to 130 dBA during the miner's full work shift. Many commenters supported the proposal, based on their belief that a miner's noise exposure should be monitored for the entire work shift. Several commenters specifically recommended that full-shift sampling also include extended work shifts, that is, those that are longer than 8 hours. Another supported the use of dosimetry to determine a miner's noise exposure.

MSHA received several comments suggesting alternatives to full-shift sampling. Several commenters suggested that miners could be monitored only during the loudest portion of their work shift, assuming that this portion was predictable. Under

this suggested approach, if monitoring during the loudest portion of the work shift did not indicate an overexposure, a full-shift measurement would be unnecessary. One commenter wanted MSHA to specify that the noise measurement be conducted for at least two-thirds of the work shift, because this commenter believed that a mine operator cannot always monitor a miner for the complete work shift, and because two-thirds of a work shift would provide sufficient information to accurately characterize the shift.

MSHA noted in the preamble to the proposal that because most mining jobs have highly variable work tasks, high mobility, and irregular work schedules, measurement of a miner's noise exposure for a partial shift may not reliably project the miner's noise exposure for a full work shift (one that is at least 8 hours), and monitoring the loudest part of the work shift could overestimate the miner's exposure.

MSHA also received several comments suggesting other ways to measure sound levels or a miner's noise exposure. A few commenters suggested that if the sound level measured with an area sample indicated that no possible overexposure exists, a full-shift measurement would be unnecessary. A few commenters suggested that the final rule require a 40-hour multiple-shift sampling period in order to better define a representative work exposure.

The monitoring requirements of the final rule are intended to be highly performance-oriented. The final rule simply requires that mine operators effectively evaluate a miner's noise exposure to determine compliance with part 62.

To be consistent with this performance-oriented approach, the language of this section of the final rule has been revised from the proposal to require that the miner's dose determination reflects the miner's full shift. This means that the mine operator has flexibility in determining a miner's noise dose, and may choose to use a method that does not necessitate sampling over the course of the entire shift.

For example, if a miner who works an eight-hour shift typically spends four hours in a noisy area of the mine and the other four hours in a quiet area, such as a mine office, the mine operator may choose to sample the miner's noise exposure only during the four-hour period that the miner is exposed to higher noise levels. In such a case, the mine operator would have a reasonable basis for concluding that a full-shift measurement is not needed to verify that the miner is not being overexposed. Mine operators are free to select the sampling methodology that is appropriate for their mines. However, mine operators should be aware that a full work shift sample is typically more indicative of a miner's noise exposure than is a partial-shift sample, and that mine operators are responsible under the final rule for ensuring that miners are protected from exposures in excess of the permissible exposure level. Mine operators also must ensure that miners with noise exposures that equal or exceed the action level must be enrolled in a hearing conservation program.

MSHA therefore recommends that, when a personal noise dosimeter is used for measurement, the determination be made over the duration of the entire shift. Alternatively, if another dose determination methodology is used, it must reflect the noise dose for the miner's full shift. For example, the multiple-shift sampling approach recommended by a commenter would produce results that are not relevant to compliance with the standard, which is based upon a miner's exposure over a full work shift.

One commenter expressed concern that personal noise dosimeters would only integrate sound levels for 8 hours. On the contrary, it has been MSHA's experience that personal noise dosimeters integrate sound levels for at least 8 hours, or until the personal noise dosimeters are either turned off or placed in a standby mode. Therefore, personal noise dosimeters can measure a miner's noise exposure during an extended shift.

Criterion Level and Exchange Rate

Section 62.110(b)(2)(iv) of the final rule remains unchanged from proposed § 62.120(a)(3)(iii) and establishes the criterion level of 90 dBA. Because commenters who referenced the criterion level did so in the context of the permissible exposure level, their comments are addressed under § 62.130 of the preamble.

Section 62.110(b)(2)(iv) of the final rule also adopts the 5-dB exchange rate, which was proposed in § 62.120(a)(3)(iii). The exchange rate is the change in sound level which corresponds to a doubling or a halving of the exposure duration. For example, using a 5-dB exchange rate, a miner who receives the maximum permitted noise dose over an 8-hour exposure to 90 dBA would have accumulated the same dose as a result of only a 4-hour exposure at 95 dBA, or 2-hour exposure at 100 dBA. If the exchange rate were reduced to 3 dB, a miner would receive the same dose with a 4-hour exposure at only 93 dBA or a 2-hour exposure at 96 dBA. In the preamble to the proposal, MSHA specifically sought comments on changing the exchange rate from 5 dB to 3 dB.

Many commenters favored the 5–dB exchange rate because they thought that implementing a 3–dB exchange rate was infeasible. Some of these commenters, believing that a 5–dB exchange rate is based on work shifts with intermittent noise exposure, felt that a 5–dB exchange rate is more appropriate because mining noise exposures are generally intermittent. A few of the commenters believed the 3–dB exchange rate was not supported by scientific evidence. Some commenters also suggested that, if the 5–dB exchange rate is retained, the permissible exposure level should be lowered to 88 or 85 dBA, and that either a 3–dB exchange rate apply above 115 dBA, or mine operators be prohibited from implementing administrative controls to control exposures to sound levels exceeding 100 or 105 dBA.

As indicated in the preamble to the proposal, MSHA evaluated the impact a 3–dB exchange rate would have on the measured noise exposure of miners working in U.S. metal and nonmetal mines. Federal mine inspectors collected measurements during the course of their regular inspections using personal noise dosimeters, collecting data using 5–dB and 3–dB exchange rates simultaneously.

The measurements for a 5–dB exchange rate were made using a 90–dBA threshold, while the 3–dB exchange rate data were obtained without a threshold, allowing for analysis of data at values below a TWA_8 of 90 dBA, which is not possible with a 90–dBA threshold. The results of the study indicated the selection of an exchange rate substantially affects the measured noise exposure in the following ways:

(1) The percentage of miners whose noise exposures would be calculated to exceed a TWA_8 of 90 dBA permissible exposure level (or an $L_{eq,8}$ of 90 dBA in the case of a 3–dB exchange rate) increased from 26.9% to 49.9% when the exchange rate changed from 5 dB to 3 dB;

(2) Switching to a 3–dB exchange rate and setting the permissible exposure level at an $L_{eq,8}$ of 85 dBA would increase the percentage of miners whose exposure is out of compliance with the permissible exposure level from 67.6% to 85.5%; and

(3) Additional engineering and administrative noise controls would be required under the 3–dB exchange rate, and they would be more expensive.

Although the Agency has not compiled similar data for coal mines, MSHA has concluded that the consequences of adopting a 3–dB exchange rate would be similar. This conclusion is based on the similarity of mining operations and equipment and the consistency of the exposure data at the 5–dB exchange rate in either sector of the mining industry.

Several commenters advocated the use of a 3–dB exchange rate, citing scientific studies to support their position.

In the preamble to the proposed rule, MSHA noted its awareness of a consensus in the recent literature that noise dose actually doubles more quickly than measured by the 5–dB exchange rate, and that there appears to be a consensus for an exchange rate of 3 dB. However, the Agency also noted in the preamble to the proposal that it intended to retain the proposed 5–dB exchange rate because of feasibility considerations.

Under the Mine Act, MSHA is required, when promulgating a standard, to make a reasonable prediction, based on the ''best available evidence,'' that the industry can generally comply with the standard within an allotted period of time. The Agency must demonstrate a reasonable probability that the typical mine operator will be able to develop and install controls meeting the standard. MSHA noted in the preamble to the proposal that the exposure data, in conjunction with the study referenced above, suggested that it would be difficult for MSHA to make such a showing in proposing a 3–dB exchange rate. This is particularly true at smaller mines, where many mines would not have enough employees to allow implementation of certain administrative controls, such as job rotation. Although some commenters were not persuaded by the discussion in the preamble to the proposal that a 3–dB exchange rate would be infeasible in the mining industry, MSHA received no additional data from commenters contradicting this determination.

Additionally, MSHA believes that any decision on the appropriate exchange rate for noise dose determinations is closely linked to a decision on the appropriate permissible exposure level, and should be considered as part of that process. As indicated in the preamble discussion of feasibility and under § 62.130, MSHA has concluded that the existing permissible exposure level should not be revised at this time. Revision of the applicable exchange rate should also be deferred. Accordingly, MSHA continues to conclude that it would be extremely difficult and prohibitively expensive for the mining industry to comply with the existing permissible exposure level with a 3–dB exchange rate, using currently available engineering and administrative noise controls. MSHA therefore cannot demonstrate that implementation of such an exchange rate would be feasible. However, the Agency will continue to monitor the feasibility of adopting a 3–dB exchange rate.

A-Weighting and Slow Response Instrument Setting

Section 62.110(b)(2)(v) of the final rule, like § 62.120(a)(3)(iv) of the proposed rule, requires that instruments used for measuring noise exposures be set for the A-weighting network and slow response. OSHA also uses the A-weighting network and the slow response for evaluating exposure to noise.

Weighting networks were originally designed to approximate the loudness-level-sensitivity of the human ear to pure tones. The human ear does not respond uniformly to all frequencies of tones. At low sound pressure levels (e.g., 50 dB), the ear is less responsive to low- and high-frequency tones. At higher sound pressure levels (that is, 90 dB), the ear responds more uniformly to low- and high-frequency tones. Low-frequency tones are, however, less damaging to hearing than mid-frequency tones.

Several weighting networks have been developed to take these differences into account and have been designated as A, B, and C. Early researchers suggested the use of the A-weighting network when the sound pressure level was less than 55 dB; the B-weighting network between 55 and 85 dB; and the C-weighting network for sound pressure levels exceeding 85 dB (Scott, 1957). Since that time, however, a scientific consensus has developed on the use of the A-weighting network to measure occupational noise exposure at all sound levels.

The acoustical performance of the A-weighting network has been defined in consensus standards established by the American National Standards Institute (ANSI). ANSI S1.4–1983, ''American National Standard Specification for Sound Level Meters,'' and ANSI S1.25–1991, ''American National Standard Specification for Personal Noise Dosimeters,'' define the identical A-weighting networks for the respective instruments. No comments were received recommending the use of a weighting network other than the A-weighting network.

Response time is a measurement of the speed at which an instrument responds to a fluctuating noise. There are several instrument response times that have been standardized fast, slow, impulse, exponential, and peak. The quickest response is the peak response and the slowest is the slow. Originally the slow response (1000 milliseconds) was used to characterize occupational noise exposure, because reading the needle deflections on a meter in rapidly fluctuating noise was easier. Using the fast response (125 milliseconds) resulted in needle deflections that were too difficult for the human eye to follow. The slow response was in use to characterize noise exposure at the time when most damage risk criteria were developed. As a result, both the previously referenced ANSI S1.4 and S1.25 instrumentation standards for sound level meters and personal noise dosimeters, respectively, contain specifications for the slow response.

Some commenters suggested that MSHA adopt the fast response for all measurements. Others objected to the use of the slow response only with personal noise dosimeters, where, they believe, the slow response overestimates the noise exposure for fluctuating or intermittent noise. These commenters had no objection to using the slow response with sound level meters where the effect of intermittency could be taken into account. One commenter stated MSHA should use the fast response to conform with an international consensus standard.

However, the majority of the scientific community and most international regulatory authorities accept slow response as the appropriate measurement parameter for characterizing occupational noise exposures, and it has been used by the U.S. Department of Labor since the adoption of the Walsh-Healey Public Contracts Act noise regulations of 1969 to measure occupational noise exposure. Based upon data included in Part V, *Material Impairment,* which showed good correlation between hearing loss and A-weighted noise exposures, and the accepted use of the slow response setting, the final rule adopts the proposed A-weighting and slow response settings for instruments that are used to determine a miner's noise exposure.

Observation of Monitoring

Paragraph (c) of § 62.110 of the final rule, like proposed § 62.120(g), requires mine operators to provide affected miners and their representatives with an opportunity to observe any monitoring required under this rule. In addition, the

final rule requires mine operators to give prior notice to miners and their representatives of the dates and times when the mine operators intend to conduct the monitoring. MSHA has no existing requirement in this area.

This provision is consistent with section 103(c) of the Mine Act, which requires that regulations issued by MSHA for monitoring or measuring toxic materials or harmful physical agents such as noise provide miners or their representatives with an opportunity to observe such monitoring. MSHA views mine operator monitoring as an important component in operators' efforts to protect the hearing of the miners they employ. The primary purpose of operator monitoring is protection of miners. Monitoring provides operators with an awareness of the miners' noise exposures at their mines and the specific sound levels to which miners are exposed. In addition, it reminds operators of their obligations to reduce excessive sound levels to ensure protection of miners.

The Agency received a number of comments on this aspect of the proposal. Several commenters supported providing miners and their representatives with an opportunity to observe required monitoring. Several commenters stated that miners should be paid when observing monitoring. On the other hand, many commenters stated that section 103(f) of the Mine Act, which requires mine operators to compensate representatives of miners who accompany MSHA inspectors on inspections, does not apply to observation of operator monitoring because it is not conducted as part of an MSHA inspection. MSHA agrees. Section 103(f) of the Mine Act requires ''walkaround pay'' when a representative of miners who is employed by the operator accompanies an MSHA inspector during an inspection of the mine. Section 103(f) does not authorize ''walkaround pay'' for time spent by a representative of miners observing a mine operator's monitoring program. The final rule, therefore, does not include a requirement for mine operators to compensate a representative of miners for participating in the observation of monitoring.

One commenter stated that by requiring mine operators to provide miners' representatives with an opportunity to observe noise monitoring, MSHA is improperly expanding the scope of section 103(c) of the Mine Act, which addresses monitoring of ''toxic materials'' or ''harmful physical agents.''

MSHA has consistently considered noise to be a ''harmful physical agent'' covered under section 103(c) of the Mine Act. The legislative history of the Federal Coal Mine Health and Safety Act of 1969, Conference Report 91–761, indicates that excessive noise was one of the harmful physical agents that Congress anticipated would be the subject of health standards. Also, the legislative history of the Federal Mine Safety and Health Act of 1977 reveals that NIOSH had conducted studies on ''toxic substances,'' including substances in metal and nonmetal mines, and had developed criteria documents on those substances, which included noise. In addition, a U.S. Circuit Court of Appeals has determined that noise is a ''harmful physical agent'' under the Occupational Safety and Health Act. *Forging Industry Association* v. *Secretary of Labor*, 773 F.2d 1436, 1444 (4th Cir. 1985). Accordingly, MSHA has concluded that noise falls within the scope of section 103(c) of the Mine Act, and that MSHA has the authority to establish regulations that provide miners and their representatives access to noise exposure monitoring conducted by mine operators.

Several commenters recommended that the Agency substitute the term ''representatives of miners'' for ''their representatives,'' because they believed that it was important to clarify that the representatives referred to in this section are miners' representatives designated under MSHA's regulations at 30 CFR part 40.

Under part 40, the definition of ''representative of miners'' includes '' 'representatives authorized by the miners,' 'miners or their representative,' 'authorized miner representative,' and other similar terms as they appear in the Act.'' Consequently, MSHA believes that the terminology used in the final rule is sufficient to indicate that the ''representative'' referred to in this section is a ''miner's representative'' designated under part 40. The final rule therefore does not adopt the suggestion of commenters.

Many commenters were opposed to allowing both miners and their representatives to observe operator monitoring. Several commenters stated that because most mine operators use personal noise dosimeters, which must be placed on the miner, the miner is effectively participating in the monitoring, and is told of the results at the end of the day. These commenters believe that requiring a miners' representative to observe would be redundant and result in adversarial relations between labor and management. The final rule does not adopt this comment, because MSHA broadly interprets the opportunity for observation of this monitoring to extend to both miners and their representatives, consistent with the underlying purposes of the Mine Act. Further, participation by miners and their representatives will enhance miner safety and health awareness and contribute to greater understanding of the nature and extent of the noise hazard.

In its Preliminary Regulatory Impact Analysis for the proposed rule, MSHA used the terms ''off-duty'' and ''non-duty'' miners in the context of observation of monitoring. One commenter raised concerns about MSHA's use of these terms, and questioned whether MSHA intended to create a new category of miner. MSHA did not intend by using this term to create a new category of miner. Instead, MSHA used the two terms interchangeably to refer to a miner who works on a shift other than the one where he or she is observing the monitoring. To avoid any confusion, MSHA uses only the term ''off-duty'' miner in the final Regulatory Economic Analysis.

One commenter was opposed to letting an off-duty miner or miners' representative on the property to observe noise monitoring. The commenter stated that this raised a number of issues, including:

> Who would be responsible for escorting these people around the property? Is the operator supposed to provide them with transportation? What happens if they should get injured? They are off duty but still on the mine property. How would this be classified?

The final rule does not specify how the requirement of observation of monitoring must be implemented. Instead, mine operators have the flexibility to determine, based on an assessment of their unique mining operations, how to best implement this provision. MSHA does not believe that it is either necessary or in the best interest of miners' health to impose additional restrictions on who should be allowed to observe monitoring, or how the observation of monitoring should be conducted. Most if not all of the hypothetical situations raised by the commenter could occur in contexts other than the observation of monitoring. MSHA expects that these questions will be resolved through the labor-management processes already in place.

Several commenters were concerned that allowing miners' representatives to observe could place the miners' representative in unsafe positions,

especially in the case of single occupancy equipment such as a shuttle car, scraper, or bulldozer. The Agency does not intend that the exercise of the right to observe noise monitoring will expose miners or their representatives to unsafe working conditions. The purpose of observation by the miners' representative is to ensure that the miner is operating the equipment under normal working conditions and that the instrumentation is being used properly. Thus, in those cases where mobile, single-occupancy equipment is involved, the miners' representative can observe the monitoring from a safe distance.

Several commenters questioned whether the number of observers or the observation time would be limited. The final rule does not limit the number of miners, their representatives, or time spent observing monitoring. Therefore, under the final rule miners have the option of observing monitoring for the full shift, part of the shift, or not at all.

MSHA considers field calibration of the instruments, and any recording of results to be included within the right of observation. MSHA believes that miners who observe operator's monitoring procedures gain insight into the nature and extent of the noise hazard, and are more likely to become more involved in the hearing conservation program. This involvement should increase the motivation for proper use of hearing protectors, thereby increasing the effectiveness of the program and allowing them to share their knowledge with their fellow miners, thus improving overall health at the mine.

Paragraph (c) also requires mine operators to give prior notice to affected miners and their representatives of the date and time they intend to conduct monitoring. One commenter supported the provision as proposed, stating that it is an acceptable and reasonable practice.

Several commenters stated that requiring notification of both miners and their representatives of operator monitoring would be unduly burdensome, and would not enhance health and safety. One commenter recommended that MSHA adopt OSHA's provision, which simply requires employees or their representatives to be afforded an opportunity to observe noise measurements.

The Agency concludes that miners and miners' representatives need time to make necessary preparations to exercise their right to observe monitoring, and that notification is necessary to achieve this goal. Notification may be needed in order to alert the miner and the miners' representative of the need to come to the mine on an off-shift, or to arrive early at the mine to observe field calibration of instrumentation. Other commenters stated that providing prior notice compromises integrity and the ability of the mine operator to inspect for safety or conduct health surveys for the benefit of workers. Because miners and their representatives will only be observing monitoring and not actually conducting monitoring, prior notice will not compromise the integrity of the monitoring. Nonetheless, MSHA emphasizes that the exercise of the right to observe monitoring should not interfere with the monitoring process.

Several commenters stated that requiring mine operators to provide prior notification of monitoring would interfere with spot area sampling. Another commenter stated that providing prior notice is not always possible, such as during the introduction of a new piece of equipment or machinery. Several commenters also questioned whether MSHA intended to require mine operators to give prior notice of all operator monitoring and whether miners and their representatives should have the opportunity to observe any and all such monitoring. These commenters suggested that the final rule require that the mine operator provide notice and the opportunity for observation only of a reasonably representative number of such monitoring events.

The final rule does not require prior notice of such activities as spot area sampling or measurement of the sound produced by a new piece of equipment before the equipment is placed into service. Under the final rule, mine operators are required to give prior notice only of monitoring that is conducted to determine whether a miner's noise dose equals or exceeds the action level, or exceeds the permissible exposure level or the dual hearing protection level.

Additionally, paragraph (c) of this section of the final rule, like the proposal, does not specify a required method of notification. One commenter supported the provision because of its flexibility with respect to such notification. Another commenter stated that for notice to be unambiguous it must be in writing and either mailed or posted on the mine bulletin board. Several commenters also questioned what would constitute adequate prior notice. For example, one commenter supported requiring prior notice but stated that the notice should be given at least five days in advance so that miners and their representatives had sufficient time to prepare to observe. Several commenters, on the other hand, stated that requiring five days' written notice would be extremely restrictive and would reduce the flexibility of the vast majority of mine operators to adjust to a changing work environment.

MSHA agrees with these commenters, and the final rule, like the proposal, requires prior notice to miners and their representatives but does not specify how this notice is to be given. The Agency considers ''prior notice'' under the final rule to be a reasonable amount of time which is practical under the circumstances to allow miners and their representatives to exercise the opportunity to observe monitoring. Under the final rule, the operator may use any method of notification—including oral, written, and posted notification—which effectively informs miners and their representatives of intended monitoring. For example, some mine operators may use informal talks as an effective means of keeping miners informed on a day-to-day basis. Other mine operators may elect to inform miners in writing to avoid confusion and to demonstrate compliance. Finally, some mine operators may elect posting because miners know where the bulletin board is located and because posting is an accepted and well established method of disseminating information at mine sites. Any of these methods would be an effective means of providing the notification required under the final rule. Therefore, this provision is adopted as proposed.

Miner Notification

Paragraph (d) of § 62.110, like § 62.120(f)(2) of the proposal, requires notification when a miner's noise exposure equals or exceeds the action level or exceeds the permissible exposure level or the dual hearing protection level. Whenever a miner's exposure is determined to exceed any of the levels established in §§ 62.120, 62.130, or 62.140 of this part, based on exposure evaluations conducted either by the mine operator or by MSHA, and the miner has not received notification of exposure at such level within the prior 12 months, the mine operator must notify the miner in writing within 15 calendar days of the exposure determination and of the corrective action being taken. The mine operator must maintain a copy of any such miner notification, or a list on which the relevant information about that miner's notification is recorded, for the duration of the affected miner's exposure at or above the action level and for at least 6 months thereafter.

The notification requirement in the final rule is consistent with section 103(c) of the Mine Act, which states in pertinent part:

> Each operator shall promptly notify any miner who has been or is being exposed to * * * harmful physical agents * * *at levels which exceed those prescribed by an applicable mandatory health or safety standard promulgated under section 101 * * *and shall inform the miner who is being thus exposed of the corrective action being taken.

Several commenters supported the requirement for written notification and requested that MSHA also require written notification to the miners' representative. Other commenters suggested that the required written notification also be submitted to MSHA. One commenter believed that notification should not be required if all miners are enrolled in a hearing conservation program. A number of other commenters questioned the need to notify affected miners in writing. Some of these commenters stated that posting the exposure determination results would be sufficient notification for the affected miner and any other miners working in the area. Other commenters believed that the mine operator should be able to choose any method of notification as long as the miner received the required notice. One commenter supported the notification requirement, and suggested including a statement concerning the mandatory use of hearing protectors, if appropriate.

The notification provided for in this paragraph is required under section 103(c) of the Mine Act. In addition, MSHA has determined that such notification is an integral part of the protection afforded to miners whose noise exposures may be injurious to their hearing. The Agency also believes that in order to ensure that all affected miners are properly notified and informed of the additional precautions necessary to protect their hearing, such notification must be in writing and must be recorded. Noise exposures at or above the action level present a significant risk of material impairment (as discussed under Part V of this preamble, *Material Impairment*). Miners must be notified when their noise exposures are at or above the action level because of this risk, and also because such exposures trigger specific corrective actions by the mine operator under the final rule—training miners, providing miners with hearing protectors, and offering miners audiometric testing. Notification alerts miners of the need to conscientiously wear their hearing protectors and may also provide some additional incentive for participation in the voluntary audiometric testing program.

MSHA has also concluded, and the final rule reflects, that the notification should be in writing. This ensures that the miner understands the exposure determination and the corrective actions being taken.

Several commenters agreed with the approach taken by the proposal that would make notification unnecessary if the mine operator had already notified the affected miner of the exposure level during the past 12 months. One of the primary objectives of notification, as explained above, is to ensure that miners are aware of the importance of taking the additional precautions to protect their hearing. If a miner's noise exposure has not changed, there would be no additional benefit to be gained by repeated notification. In any case, annual retraining is required for those miners whose noise exposures continue to equal or exceed the action level.

Many commenters took issue with the proposed time frame of 15 calendar days for mine operators to notify a miner in writing that the miner's noise exposure exceeded any limit prescribed in proposed § 62.120. Most of the commenters believed that the 15-day time frame was too restrictive and suggested that this period be extended. Among the reasons given in support for this suggestion were delays in obtaining exposure reports from consultants and employee vacations. Commenters recommended time frames for notification that ranged from 15 to 60 days. A few recommended that the mine operator be allowed to determine the appropriate time frame. One commenter, however, suggested that the time allowed for notification be reduced to 24 hours for exposure determinations and 7 days for reporting the mine operator's plan of corrective actions to reduce the noise exposure. One commenter was opposed to the notification requirement, because OSHA's noise standard lacks this provision.

MSHA believes that timely notification is an important first step in protecting miners from excessive noise exposure. The final rule therefore adopts the proposed requirement that the mine operator notify the miner within 15 calendar days of any noise exposure that equals or exceeds the action level or exceeds the permissible exposure level or the dual hearing protection level. The 15-day time frame is adopted from the proposal based on MSHA's determination that 15 days affords the mine operator sufficient time to provide this notification. This determination takes into account the fact that administrative delays may arise, but balances these delays against the need for miners to be alerted promptly of potentially harmful noise exposures, and to be informed of the steps that are being taken to remedy the situation.

The proposal would have required that records of required notification be maintained at the mine site. Several commenters requested that the final rule allow the required records to be maintained at a central location, such as a corporate office, to ease the burden of managing the records of multiple mine sites. Commenters also stated that they believed this would make it easier for MSHA to review the required records for these sites.

As stated in Part III of this preamble, MSHA agrees with the points made by these commenters, particularly in light of the fact that electronic records are common in the mining industry, and that many or all of a mine's records may be stored on computer at a centralized location. The final rule therefore does not adopt the proposed requirement that these records be maintained at the mine site, and does not specify a location where the records must be maintained. However, the records must be stored in a location that will allow the mine operator to produce them for an MSHA inspector within a relatively short period of time, which in most cases will be no longer than one business day.

Commenters also presented their views on record retention. Under the proposal, records of miner notification would have been required to be retained for the duration of the miner's exposure above the action level and for 6 months thereafter. A few commenters believed a requirement for record retention was unnecessary. Other commenters believed the records should be maintained for longer than 6 months beyond the duration of exposure. The recommended record retention time ranged up to 40 years. Several commenters believed the exposure records should be treated as medical records. Another commenter believed the exposure records should be retained for at least the duration of the affected miner's employment.

MSHA has concluded, and the final rule reflects, that it is sufficient for the mine operator to retain exposure notification records for the duration of the miner's exposure at or above the action level and for at least 6 months thereafter. The retention period provided for by the final rule calls for records to be retained for a relatively short period of time after cessation of exposure at or above the action level, minimizing the recordkeeping burden

on mine operators. The extended record retention periods recommended by some commenters would be appropriate if the records were to be used for epidemiological purposes. However, the records required to be maintained under this section of the final rule are not the type of dose determinations that would be suitable for epidemiological analysis. Additionally, unlike the effects of exposure to carcinogens, hearing loss due to noise exposure manifests itself shortly after the exposure. The effects of exposure to carcinogens may not be seen until years after exposure. Requiring the retention of noise exposure records for many years therefore serves no purpose. The final rule therefore does not adopt this comment.

Warning Signs

The proposed rule did not include any requirements for the posting of warning signs at mines to alert miners of noise hazards that may be present. In the preamble to the proposed rule, MSHA acknowledged the possible value of warning signs but concluded that the constantly changing mining environment presents significant obstacles to effective posting. MSHA therefore determined that the miner training requirements of the final rule will ensure that miners are sufficiently informed of the noise hazards to which they may be exposed.

Although MSHA did not solicit comments in the proposed preamble on warning signs, several commenters did express their opinions on this issue. Some commenters believed the warning signs should be required, other commenters believed posting signs is appropriate only where hearing protectors must be worn. Several other commenters believed that posted warning signs were not effective because they were ignored.

MSHA continues to conclude that the posting of warning signs should be optional and is best left to the discretion of the operator. As stated in the proposed preamble, MSHA expects that many mine operators will voluntarily post signs to indicate areas of the mine where hearing protectors should be worn.

Section 62.120 Action Level

Like the proposal, § 62.120 of the final rule requires mine operators to take certain actions when a miner's noise exposure equals or exceeds an 8-hour time-weighted average of 85 dBA during any work shift. Under proposed § 62.120(b)(1) and (b)(2), mine operators would have been required to provide training to a miner exposed above the action level, provide hearing protection to such miner, and enroll the miner in a hearing conservation program that included audiometric testing.

Under the final rule, the mine operator is required to enroll a miner in a hearing conservation program that complies with § 62.150, which consolidates the elements of a hearing conservation program into a single section. These elements include a system of monitoring that complies with § 62.110; the use of hearing protectors under § 62.160; audiometric testing under §§ 62.170 through 62.175; training under § 62.180; and recordkeeping under § 62.190. Although the language of the final rule differs from that of the proposal, the requirements are essentially the same. This reorganization of the rule was made in response to commenters who recommended that the final rule take a more traditional approach to the hearing conservation program. This issue is discussed in greater detail under § 62.150 of the preamble.

The final rule requires that the mine operator enroll a miner in a hearing conservation program if, during any work shift, the miner's noise exposure equals or exceeds a TWA_8 of 85 dBA or, equivalently, a dose of 50%. Like the proposal, the final rule requires that all sound levels from 80 dBA to at least 130 dBA be integrated into the noise exposure determination for the action level. This integration range requirement is identical to the one in OSHA's noise standard. Sound levels below the 80-dBA threshold are not integrated into the noise exposure measurement. It should be noted that a noise dose determination for the permissible exposure level requires the use of a 90-dBA threshold. In practice, when a noise exposure measurement is performed, either two separate noise dosimeters (one set for an 80-dBA threshold for the action level, and one set for a 90-dBA threshold for the permissible exposure level), or a single dosimeter with dual threshold capabilities would be required.

The final rule clarifies that the mine operator must enroll a miner in a hearing conservation program if during any work shift the miner's exposure equals or exceeds the action level. The proposal would have provided that the mine operator take action if the miner's exposure exceeded the action level. A number of commenters recommended this clarification to ensure that the final rule was consistent with OSHA's noise standard. The final rule has been revised accordingly.

Many commenters supported the concept of an action level but wanted MSHA to be consistent with the requirements of OSHA's noise standard. In particular, the commenters supported the proposed requirement for taking initial protective action at the level of 85 dBA, and the threshold of 80 dBA for integrating all sound levels when computing the action level. These commenters stated that the 85-dBA action level and 80-dBA threshold were more protective of miners and based on the best available scientific information, and were also compatible with OSHA's noise standard.

However, a number of commenters were opposed to the proposed establishment of an action level. Several commenters questioned the appropriate action level, stating that the level should be set at a TWA_8 of 90 dBA. Some of these commenters believed that noise control technology for complying with an action level of a TWA_8 of 85 dBA is not available, and that an allowance for the use of hearing protectors should be made when determining compliance with the action level.

MSHA's determination that it is necessary to establish an action level in the final rule is based on several considerations. The first and most important of these factors is that MSHA's review of the scientific literature and Agency risk data, coupled with the comments submitted under this rulemaking, indicates that there is a significant risk of material impairment to miners from a lifetime of exposure to noise at a TWA_8 of 85 dBA, as discussed in the preamble section on material impairment. For that reason, miners need to be protected from noise exposures at or above this level. However, as explained in greater detail under the preamble discussion of the permissible exposure level, the Agency has determined that it is not feasible at this time for the mining industry to comply with a lower permissible exposure level. The issue of risk to miners is discussed in greater detail under the material impairment section of this preamble.

MSHA has nonetheless concluded that it is necessary to provide miners with protection at this level in order to reduce instances of new hearing loss and to prevent the progression of existing hearing loss. Agency data reveal that a miner's risk of developing a significant hearing loss drops by approximately half under the new action level requirements of the final rule.

As stated above, the hearing conservation program in which miners are enrolled under the final rule must comply with § 62.150, and must address the use of hearing protectors, provide

miners with audiometric testing, and provide effective monitoring of their noise exposures. Although some commenters disputed the effectiveness of hearing conservation programs, MSHA has reviewed the research concerning such programs, especially the OSHA hearing conservation program, and has determined that hearing conservation programs are effective in protecting workers.

Under the final rule, a miner who is exposed to noise at or above the action level must, as part of the enrollment in a hearing conservation program, receive specialized training that addresses the hazards of noise and protective methods. Specific topics that must be addressed by this training include the effects of noise on hearing, the purpose and value of wearing hearing protectors, and the mine operator's and miner's respective tasks in maintaining noise controls.

Additionally, a miner who is enrolled in a hearing conservation program must be provided with properly fitted hearing protectors and receive training on their use. Although MSHA has concluded that the difficulty in determining the noise reduction provided by a given hearing protector makes it inappropriate to adjust a dose determination on that basis, hearing protectors can serve as an effective means of protecting miners from the hazards of excessive noise.

Miners enrolled in a hearing conservation program must also be offered annual audiograms at no cost. Annual audiometric testing will enable mine operators and miners to take protective measures in response to identified early hearing loss, and enable the prevention of further deterioration of hearing.

As discussed in the preamble to the proposed rule, a number of studies have addressed the effectiveness of hearing conservation programs in preventing hearing loss. Many of the studies indicate that a hearing conservation program can be effective in reducing and controlling noise-induced hearing loss, but only if management and employees strictly follow the program requirements.

MSHA has therefore concluded that enrollment in a hearing conservation program for miners whose noise exposure equals or exceeds the action level can protect miners from occupational hearing loss. Consistent with this determination, the final rule requires these miners to be enrolled in such a program. However, as stated above, the effectiveness of the program in protecting miners depends on the commitment of mine operators and miners to conscientious compliance with the requirements of the program.

MSHA agrees with the commenters who stated that noise control technology may not always be available to reduce the noise exposure below the action level. The lack of available technology was one of the bases for MSHA's determination that a permissible exposure level of a TWA_8 of 85 dBA is not feasible for the mining industry at this time. Consistent with that determination, the final rule does not require that noise controls be implemented to reduce miners' noise exposures to the action level. Instead, mine operators are required to enroll miners in a hearing conservation program if the miners' exposures reaches the action level.

Some commenters stated that the proposed action level requirement would create unnecessary paperwork and cost burdens for mine operators. MSHA has evaluated all of the paperwork provisions in the final rule and has chosen the alternatives which impose minimal paperwork burdens on the industry. Although the final rule does eliminate some existing paperwork requirements, MSHA believes that the remaining paperwork provisions in the final rule are necessary for improving protection for miners.

Many commenters supported the proposed integration of all sound levels from 80 dBA to at least 130 dBA when computing the action level. They stated that this was consistent with OSHA's noise standard, would be more protective of miners, and would allow resources to be directed at the worst exposures. Other commenters opposed the proposed integration range of 80 dBA to 130 dBA, stating that it would unnecessarily inflate the calculated noise dose and dramatically increase the time-weighted average daily exposure dose. Based on a review of the entire record, the final rule reflects the proposed integration range of 80 dBA to at least 130 dBA as appropriate for protecting miners from experiencing additional hearing impairment.

MSHA notes that the requirements in § 62.110(b) of the final rule, which apply to miners' dose determinations, must be complied with when a noise exposure assessment is conducted for the action level. This means that, in addition to integrating all sound levels over the appropriate range, the determination must be made without adjustment for hearing protectors; must reflect the miner's full work shift; must use a 90-dB criterion level and a 5-dB exchange rate; and use the A-weighting and slow response instrument settings.

The requirements in proposed § 62.120(b)(2) that the mine operator provide hearing protectors to the affected miners and ensure their use, if it would take more than 6 months to conduct the baseline audiogram or if a miner is determined to have incurred a standard threshold shift, have been adopted in § 62.160(c)(1) and (c)(2) of the final rule.

Additionally, as indicated under § 62.160 of the preamble, proposed § 62.120(b)(3), which would have required that the mine operator provide any miner who has been exposed to noise above the action level with hearing protectors upon request, is not specifically adopted in the final rule. Because the final rule requires that such a miner be enrolled in a hearing conservation program, which must include the provision of hearing protectors under § 62.160 of the final rule, the adoption of the proposed requirement is unnecessary.

Section 62.130 Permissible Exposure Level (PEL)

Section 62.130(a) of the final rule adopts proposed § 62.130(c) and establishes a permissible exposure level of an 8-hour time-weighted average (TWA_8) of 90 dBA, which represents no substantive change from the existing standards. Under the final rule, a TWA_8 of 90 dBA is equivalent to a dose of 100%. The final rule provides that no miner be exposed during any work shift to noise that exceeds the permissible exposure level. Paragraph (a) also provides that if during any work shift a miner's noise exposure exceeds the permissible exposure level, the mine operator must use all feasible engineering and administrative controls to reduce the miner's noise exposure to the permissible level, and enroll the miner in a hearing conservation program.

Under the current metal and nonmetal noise standard, feasible engineering or administrative controls are required to be used when a miner's noise exposure exceeds the permissible exposure level. The noise reduction provided by a hearing protector is not considered in determining a miner's exposure at metal and nonmetal mines. Under the current coal noise standard, feasible engineering and/or administrative controls are required to be used when a miner's exposure exceeds the permissible exposure level.

Unlike the metal and nonmetal standard, however, the coal standard states that required controls may include hearing protectors in specific circumstances. Credit is also given at coal mines for the noise reduction value

of hearing protectors in determining a miner's noise exposure.

The final rule specifies that mine operators must integrate sound levels from 90 dBA to at least 140 dBA. MSHA proposed integrating sound levels between 80 dBA and 130 dBA into the permissible exposure level, but stated in the proposed preamble that MSHA was not recommending a lower permissible exposure level, since it would be infeasible for the mining industry. However, in evaluating and reviewing the rulemaking record, MSHA has concluded that lowering the threshold of sound levels integrated into the permissible exposure level determination for purposes of measuring a miner's noise exposure would in fact result in a lower permissible exposure level, something that the Agency did not intend. The final provision is therefore less restrictive than the proposed provision would have been, but is consistent with MSHA's findings on feasibility.

The final rule requires that mine operators use all feasible engineering and administrative noise controls to bring miners' noise exposures within permissible levels. Mine operators must provide miners with hearing protectors and ensure that the protectors are properly used if engineering and administrative controls fail to reduce exposure to the permissible exposure level.

Unlike the enforcement policy at metal and nonmetal mines, current coal enforcement policy allows mine inspectors to subtract the estimated noise reduction provided by hearing protectors when determining a miner's noise exposure. When a coal mine operator does receive a citation for a miner's exposure exceeding the permissible exposure level, the operator must promptly institute engineering or administrative controls, or both. Within 60 days of receipt of the citation, the mine operator must submit to MSHA a plan for the administration of a continuing, effective hearing conservation program, which includes provisions for reducing environmental sound levels to achieve compliance, providing hearing protectors, and pre-employment and periodic audiograms.

The final rule now requires that mine operators in both the coal sector and metal and nonmetal sectors use all feasible engineering and administrative controls to reduce a miner's noise exposure to the permissible exposure level. The final rule does not place preference on the use of engineering controls over administrative controls. MSHA intends for mine operators to have a choice of which type of control they use, as long as mine operators use all feasible controls necessary to bring a miner's exposure to within the permissible exposure level.

Section 62.130(a) of the final rule also requires that if a miner's noise exposure exceeds the permissible exposure level, the mine operator must enroll the miner in a hearing conservation program that complies with § 62.150 of the final rule. Implementation of a hearing conservation program is a new requirement for metal and nonmetal mine operators and for some coal mine operators.

The final rule adopts the proposed requirement for mine operators who use administrative controls. Those mine operators must now post procedures for such controls on the mine bulletin board and provide a copy of the procedures to each affected miner.

Paragraph (b) of § 62.130 of the final rule, like the proposal, provides that if feasible engineering and administrative controls fail to reduce a miner's exposure to the permissible exposure level, the mine operator must continue to use all engineering and administrative controls to reduce the miner's exposure to as low a level as is feasible.

The proposed rule would have also required that the mine operator ensure that a miner exposed above the permissible exposure level submit to the audiometric testing provided as part of the hearing conservation program. The final rule, however, does not adopt this provision. Further discussion of this issue is provided under § 62.170, addressing audiometric testing.

Section 62.130(c) of the final rule adopts the proposed provision that at no time must a miner be exposed to sound levels exceeding 115 dBA, and also clarifies that the sound level must be determined without adjustment for the use of hearing protectors.

Finally, proposed § 62.120(d), which addressed the dual hearing protection level, has been moved to § 62.140 of the final rule.

Section 62.130 of the final rule establishes a permissible exposure level of a TWA_8 of 90 dBA, which represents no substantive change from existing MSHA standards. The permissible exposure level is the maximum time-weighted average sound level to which a miner may be exposed. The exposure needed to reach the permissible exposure level varies by sound level and duration. For example, a miner's exposure would reach the permissible exposure level if the miner is exposed to a sound level of 90 dBA for 8 hours or to a sound level of 95 dBA for only 4 hours.

A number of commenters favored a permissible exposure level of a TWA_8 of 85 dBA, stating that because a significant risk of impairment occurs at this level, miners need greater protection. MSHA gave serious consideration to establishing a lower permissible exposure level, including a reduced exchange rate, based on its determination that there is a significant risk to miners of a material impairment of health when noise exposures equal or exceed a TWA_8 of 85 dBA. MSHA has concluded, however, that it is infeasible at this time for the mining industry to achieve a more protective level by using engineering and administrative controls. Therefore, under the final rule, MSHA continues to require a permissible exposure level of a TWA_8 of 90 dBA, but miner protection is increased from that provided under existing MSHA noise standards by requiring that mine operators take protective measures at an action level of a TWA_8 of 85 dBA.

Some commenters believe that MSHA did not adequately justify that a permissible exposure level of a TWA_8 of 85 dBA was technologically and economically infeasible. Also, one commenter objected to considering economic infeasibility in the rationale for not reducing the permissible exposure level to a TWA_8 of 85 dBA. Section 101(a)(6)(A) of the Mine Act directs that the Secretary's rulemaking authority be exercised within the boundaries of feasibility, and, as discussed in the preamble to the proposal, MSHA considered both technological capabilities and the economic impact of a lower permissible exposure level. MSHA made a preliminary determination, set forth in the preamble to the proposal, that a lower permissible exposure level was not feasible. MSHA also requested that commenters submit relevant additional data on this issue but did not receive adequate supporting data in response to this request.

Regarding the feasibility of a TWA_8 of 85 dBA, MSHA has found that a typical mine operator will not be able to develop and install engineering controls at this time which will meet a permissible exposure level lower than a TWA_8 of 90 dBA. The Agency's finding is based on the large number of mines which would require engineering and administrative controls to reduce current exposures and on an evaluation of noise control technology under actual mining conditions, including retrofitting equipment, and the cost of implementing such controls. As stated in the preamble to the proposed rule, MSHA conducted a survey of noise exposures in the mining industry to

assess the capability of the industry to comply with a permissible exposure level lower than the current TWA_8 of 90 dBA through the use of engineering and administrative controls. The survey is referenced as the ''dual-threshold survey'' in the section that addresses material impairment in this preamble. Exposure data collected by MSHA indicated that with a permissible exposure level of a TWA_8 of 85 dBA and an 80-dBA threshold, over two-thirds of the metal and nonmetal mining industry and over three-quarters of the coal mining industry would need to use engineering and administrative controls to reduce current exposures (see Tables 11 and 12 in Part V of this preamble).

A typical mine operator would not be able to develop and install engineering controls at this time which would result in compliance with a permissible exposure level lower than a TWA_8 of 90 dBA. Although the discussion of feasibility in this preamble references control rooms and booths and acoustically treated cabs as being capable of reducing exposures to below 85 dBA, MSHA has found that, for the most part, sound levels for most mining equipment cannot be reduced to that extent using engineering controls. This includes consideration of retrofit noise control technology to achieve 85 dBA or less which is not available for the majority of mining equipment without major redesign of the equipment. The Agency's finding is based, in part, on the evaluation of newly developed noise controls under actual mining conditions described in ''Summary of Noise Controls for Mining Machinery'' (Marraccini et al., 1986). Therefore, the Agency has concluded that a typical mine operator will not be able to develop and install engineering controls at this time that will result in compliance with a permissible exposure level lower than a TWA_8 of 90 dBA.

In addition, the Agency has found that, where available, the cost of implementing controls would be prohibitively expensive, based on the large percentage of mines that would be out of compliance if a lower permissible exposure level were to be adopted. As reflected under the preamble discussion of feasibility, MSHA has determined that retention of the existing permissible exposure level and threshold under the final rule would not result in any incremental costs for engineering controls for the metal and nonmetal sector, but would result in costs of $1.79 million for engineering controls for the coal sector. Costs would be incurred only by the coal mining sector under the final rule, because hearing protectors have generally been substituted for engineering controls in coal mines under the current regulations. Thus, unlike the metal and nonmetal mining industry, the coal mining industry has not exhausted the use of feasible engineering and administrative controls to reduce noise exposures to within the permissible exposure level of a TWA_8 of 90 dBA. However, significant costs would be incurred by the entire mining industry if the permissible exposure level were to be reduced to a TWA_8 of 85 dBA and an 80-dBA threshold.

MSHA's ''dual-threshold survey'' shows that a significant percentage of all mines, which would be out of compliance if a lower permissible exposure level were adopted, would incur costs. Engineering controls that are needed to reduce exposure levels to a TWA_8 of 85 dBA are more costly than those which reduce exposure to a TWA_8 of 90 dBA. MSHA's analysis indicates that where it is available, retrofitting equipment to achieve a permissible exposure level of a TWA_8 of 85 dBA can cost $15,000 or more per piece of equipment. Remote control in conjunction with a fully-treated, environmentally-controlled operator's booth can cost $10,000 or more depending on the size of the booth and the extent of technology needed to run the process or equipment remotely. MSHA has estimated that a permissible exposure level of a TWA_8 of 85 dBA with a 3 dB exchange rate would cost over $54 million annually just to retrofit equipment. However, retrofitting existing equipment alone would not enable most mines to achieve compliance with a permissible exposure level of 85 dBA as a TWA_8. For some of these mines, capital equipment would need to be replaced by quieter equipment capable of meeting the lower 85 dBA level, but the cost would be enormous. For example, where new equipment exists, depending on its size, costs range from approximately $260,000 to $360,000 for single boom drills with fully treated operator cabs, to approximately $2,000,000 for a 240 ton haul truck with a fully treated operator cab. However, as previously noted, for many types of capital equipment, no compliant replacement equipment currently exists. Because most mines could not fully meet a lower permissible exposure level using currently available technology, the Agency has determined that a lower permissible exposure level would not be feasible at this time. Accordingly, the Agency is adopting the existing permissible exposure level of a TWA_8 of 90 dBA, but is also requiring hearing conservation measures when the exposure reaches a TWA_8 of 85 dBA.

Another commenter suggested that a long phase-in period, such as 10 years, be adopted for a permissible exposure level of a TWA_8 of 85 dBA. In considering the technological and economic impact of a new standard, MSHA must make a reasonable prediction, based on the best available evidence, as to whether the mining industry can generally comply with the rule within an allotted period of time. MSHA seriously considered establishing a permissible exposure level of a TWA_8 of 85 dBA in conjunction with an extended phase-in schedule for compliance. However, the Agency could not project, with any reasonable certainty, when the mining industry would be capable of developing and installing the necessary control technology to meet such a permissible exposure level. In the preamble to the proposal, MSHA made no assumptions about the development of new technologies to further assist mine operators in controlling noise. The Agency requested commenters to provide information but received none. Although enforcement of the final rule requires that individual mine operators only use those controls which are feasible for the particular mine operator, MSHA is unable to demonstrate a reasonable probability that the mining industry as a whole would be able to comply, even with a long phase-in period.

Several commenters wanted MSHA to adjust the permissible exposure level of a TWA_8 of 90 dBA for those miners working extended work shifts, and one commenter believed that it was important to include extended work shifts in the definition of the permissible exposure level. The final rule requires mine operators to determine a miner's noise exposure for the full work shift, regardless of length of time the miner works on the shift. MSHA acknowledges that extended work shifts are becoming a more common practice in the mining industry and intends for miners working on these shifts to receive the full protection of the final rule. Sampling for a full shift is consistent with the OSHA standard as well as current noise regulations for both coal and metal and nonmetal mines.

Section 62.130(a) of the final rule differs from the proposal in that a miner's exposure determination for comparison to the permissible exposure level requires the integration of all sound levels from 90 to at least 140 dBA. The proposal would have required integration of sound levels from 80 to at least 130 dBA. Several commenters to the proposed standard brought to

MSHA's attention that the proposed range of sound integration would result in a lower permissible exposure level for the mining industry, an unintended result of the rule, discussed earlier. Moreover, the final rule's adoption of the proposed 80-dBA threshold for determining whether miners' exposures equal or exceed the action level ensures that miners are afforded protection at or above an exposure of a TWA_8 of 85 dBA.

Section 62.130(a) also requires that when a miner's noise exposure exceeds the permissible exposure level, the mine operator must use all feasible engineering and administrative controls to reduce a miner's exposure to the permissible exposure level before relying on hearing protectors. In addition, mine operators must establish a hearing conservation program for affected miners.

The final rule does not place preference on the use of engineering controls over administrative controls to protect miners exposed above the permissible exposure level. All feasible controls, of both types if necessary, must be implemented to reduce noise exposure to the permissible exposure level, or to the lowest feasible level if the permissible exposure level cannot be achieved. In response to commenters who questioned which controls mine operators must use, MSHA emphasizes that mine operators have a choice of which control method they will use first. Under the final rule, they may use engineering controls, administrative controls, or both; but if administrative controls are utilized, a copy of such procedures must be posted and given to each affected miner. The final rule affords mine operators flexibility in selecting the most appropriate control method applicable under the circumstances.

Although the final rule does not give preference to engineering controls over administrative controls, engineering controls provide a permanent method of modifying the noise source, the noise path, or the environment of the miner exposed to the noise, thereby decreasing the miner's exposure to harmful sound levels. Engineering controls do not depend upon individual performance or human intervention to function. Moreover, the effectiveness of engineering controls can be readily determined using standardized acoustical measurement and assessment procedures. In addition, routine maintenance ensures the long-term effectiveness of engineering controls. Thus, MSHA has concluded that the use of engineering controls provides the most consistent and reliable protection to miners.

Administrative controls reduce exposure by limiting the amount of time that a miner is exposed to noise through such actions as rotation of miners to areas with lower sound levels, rescheduling of tasks, and modifying work activities. MSHA believes that administrative controls can be as effective as engineering controls and are typically less costly than engineering controls, and MSHA anticipates growing interest in implementation of administrative controls by the mining community. MSHA will make guidance materials pertaining to administrative controls available to the mining community before the effective date of the final rule.

In the proposed preamble, MSHA had requested comment from the mining community on the primacy of engineering and administrative controls. The Agency received a number of comments from the public in support of the primacy of engineering and administrative controls, as well as a number of comments in support of equating personal hearing protectors with controls. These comments are discussed below.

Commenters who favored permitting the use of hearing protectors to meet the permissible exposure level asserted that hearing protectors adequately protect the hearing of miners, are more cost effective, and provide greater noise reduction than engineering controls. In addition, some commenters believe that personal hearing protectors used in conjunction with a hearing conservation program are as effective as engineering and administrative controls.

Other commenters wanted MSHA to permit the use of hearing protectors in lieu of engineering and administrative controls, provided that the noise exposure did not exceed a TWA_8 of 100 dBA. These commenters stressed that this is allowed by OSHA's current enforcement policy.

The OSHA noise standard at 29 CFR § 1910.95 requires employers to use engineering and administrative controls. Under the OSHA noise standard, hearing protectors may be used only to supplement controls. Current OSHA enforcement policy allows employers to rely on personal protective equipment and a hearing conservation program rather than engineering and/or administrative controls when hearing protectors will effectively attenuate the noise to which the employee is exposed to acceptable levels as specified in Tables G–16 or G–16a of the standard. Furthermore, hearing protectors may not reliably be used when employee exposure levels border on 100 dBA. MSHA's rulemaking record indicates that a number of professional organizations have recommended that OSHA rescind this policy and rely on engineering and administrative controls.

As explained in the preamble discussion of § 62.110 of the final rule, MSHA has decided to adopt the approach of the proposal, which is not to accept personal hearing protectors in lieu of engineering or administrative controls. The Agency's position is supported by its own research on noise reduction values of hearing protectors under actual mining conditions. Additionally, this position is supported by studies referenced in the preamble discussion of § 62.110 that address noise dose determination without adjustment for the use of hearing protectors. Moreover, promulgating a rule which is consistent with OSHA policy would result in a diminution of safety to miners in the metal and nonmetal sectors of the mining industry. Section 101(a)(9) of the Mine Act requires that no new standard reduce the protection afforded miners by an existing standard. For metal and nonmetal mines, MSHA currently requires the use of engineering or administrative controls to the extent feasible to reduce exposures to the permissible exposure level. Under existing standards if the permissible exposure level cannot be achieved, hearing protectors must be made available to miners. If OSHA's policy were to be adopted into the final rule, the benefits of using feasible engineering and administrative controls would be lost. In addition, OSHA's noise enforcement policy is based on a judicial interpretation of ''feasible'' as used in the context of OSHA's noise standard which is an established federal standard adopted without rulemaking at the OSH Act's inception under Section 6(a) of the OSH Act rather than the product of a regular OSHA rulemaking under Section 6(b) of the OSH Act.

Under the Mine Act, one of the roles of the National Institute for Occupational Safety and Health (NIOSH) is to advise MSHA in establishing mandatory health and safety standards. While MSHA is aware that NIOSH is seeking to develop an approach that would more accurately adjust the noise reduction ratings of hearing protectors in actual workplace use, the prospects for this remain uncertain. In addition, adjustment methods that are appropriate for general industry may not be appropriate in the mining environment. As explained in the preamble discussion of § 62.110 of the final rule, MSHA has found that hearing protectors provide much less

noise reduction under actual mining conditions than was measured in the laboratory. In many instances, noise reduction was minimal and highly variable, indicating that hearing protector effectiveness cannot be reliably predicted under actual use conditions.

During the rulemaking process, MSHA requested that NIOSH provide its opinion on the hierarchy of noise controls. NIOSH stated in its December 16, 1994, response (NIOSH, 1994) that there are three elements in the hierarchy of effective noise controls:

(1) Preventing or containing workplace noise at its source;

(2) Removing the noise by modifying the pathway between the worker and the noise source; and

(3) Controlling the worker's exposure by providing a barrier between the worker and the noise source.

NIOSH further stated that noise controls must provide reliable, consistent, and adequate levels of protection for each individual worker throughout the life span of the controls, minimize dependence on human intervention, consider all routes of entry (bone and air conduction), and not exacerbate existing health or safety problems or create additional problems of its own.

The conclusions of a report published by the Office of Technology Assessment in 1985, entitled ''Preventing Illness and Injury in the Workplace,'' also support MSHA's position. This report found that health professionals rank engineering controls as the priority means of controlling exposure, followed by administrative controls, with personal protective equipment as a last resort.

In addition, Nilsson et al. (1977) studied hearing loss in shipbuilding workers. The workers were divided into two groups. The first group was exposed to sound levels of 94 dBA, with 95% of the workers using hearing protectors. The second group was exposed to sound levels of 88 dBA, with 90% of workers wearing hearing protectors. Both groups were subjected to impulse noise up to 135 dB.

Despite the fact that the vast majority of the workers in both groups wore hearing protectors, cases of noise-induced hearing loss were common. As exposure durations increased, the amount of noise-induced hearing loss increased, so workers exposed to sound at 94 dBA exhibited more hearing loss than those exposed to 88 dBA. Slightly more than fifty-eight percent of all of the workers had some degree of hearing impairment, only 1.8% of which was caused by factors other than noise. According to the researchers, the hearing protectors should have reduced the noise by at least 13 dBA. They concluded that reliance on hearing protectors alone is not sufficient to protect the hearing sensitivity of the workers.

Although many commenters may prefer to use hearing protectors in lieu of engineering or administrative controls to protect miners from noise overexposures, MSHA has concluded that the scientific evidence does not support this position, and that the approach taken in the final rule best protects miners from further noise-induced hearing loss.

A few commenters were concerned that the miner would suffer a loss of pay if administrative controls were instituted and the miner was rotated to a lower-paying job. However, the Mine Act does not authorize the Secretary to require pay retention for miners rotated for the purpose of reducing exposure to a harmful physical agent, and the final rule does not adopt that comment.

Paragraph (a) of § 62.130 of the final rule also adopts the requirement of proposed § 62.120(c)(1) that mine operators post on the mine bulletin board the procedures for the administrative controls in effect at the mine and provide all affected miners with a copy. MSHA believes that miners must be specifically notified of the administrative controls being used and actively follow them to achieve effective results. Posting informs miners of critical work practices necessary for reducing their noise exposures, especially when miners are temporarily assigned to a different job. Moreover, this requirement is consistent with section 109 of the Mine Act, which requires a mine operator to have a bulletin board at the mine office or in an obvious place near a mine entrance for posting of certain documents, including notices required by MSHA regulations.

A number of commenters objected to a requirement for written notification of miners of the administrative controls in use at the mine. Some of these commenters were of the opinion that written notification may not be the best method for alerting miners of administrative control procedures, since these procedures may need to be revised on a daily basis. Some commenters suggested that MSHA accept informal workplace talks and safety meetings as compliance with the written notification provision, which they believed would be burdensome for mine operators.

MSHA has reviewed alternative methods for compliance under this provision and has concluded that a notification provision with a narrow application, such as in the final rule, appropriately informs miners of critical measures to protect their hearing. Moreover, commenters are encouraged to review the summary of the Regulatory Economic Analysis.

Most commenters requested that MSHA clarify the meaning of the term ''feasible.'' Many commenters specifically requested that MSHA include economic considerations in the definition of feasibility. What constitute ''feasible'' engineering and administrative noise controls is discussed in Part VI of this preamble. As part of that discussion, MSHA cites applicable case law, which specifically provides that a consideration of feasibility must include both technological and economic factors.

Some commenters suggested that ''feasible'' engineering controls need to be capable of reducing a miner's noise exposure to the permissible exposure level rather than to the lowest level achievable for the control. Others suggested that a control should produce at least a 3-dBA noise reduction before that control is considered ''feasible,'' which corresponds with MSHA's current policy. The applicable case law on this issue provides that an engineering control may be feasible even though it fails to reduce exposure to the permissible level set by the standard, as long as there is a significant reduction in exposure. As stated in the proposed preamble and reiterated in the discussion of feasibility in this preamble, MSHA considers a significant noise reduction to be a 3-dBA reduction in the miner's noise exposure.

Several commenters were concerned about the development and availability of engineering controls, including retrofit packages in the marketplace. Engineering noise controls, including retrofit equipment, are currently available for many types of mining machinery, and many manufacturers sell noise control packages as options. Furthermore, mining equipment manufacturers are diligently developing new engineering controls to reduce exposure to noise. The preamble discussion on feasibility includes a list of available controls for commonly used mining equipment. Suggestions are also included in that section for retrofitting existing mining equipment. MSHA is also available to assist mine operators with obtaining retrofit packages and other necessary controls for reducing noise sources.

Several commenters questioned whether the assumption that engineering controls currently feasible in metal and nonmetal mines could be adapted for use in coal mines. In fact,

MSHA's experience has been that many of the engineering noise controls developed for machinery used in metal and nonmetal mines could be easily used on the same types of machinery in coal mining, and vice versa.

A few commenters requested that MSHA continue to ''grandfather'' older equipment, as the Agency does at metal and nonmetal mines. Current metal and nonmetal enforcement policy allows a mine operator, upon written request to the District Manager, up to 12 months to retire a piece of machinery once it has been identified as the source of a noise overexposure.

This comment has not been adopted in the final rule. Protection of miners from the harmful effects of noise must be the first consideration. The final rule does not take effect until 12 months after the date of publication, which provides all mine operators with adequate time to retire older, noisy equipment. After the final rule takes effect no exceptions will be allowed for equipment that may be nearing the end of its useful life.

One commenter stated that the final rule should not be technology-forcing. However, Congress intended that MSHA health standards advance technology in order to better protect miners' health. It is therefore appropriate for MSHA to take into account, in determining feasibility, the state-of-the-art engineering that exists in the mining industry at the time the standard is promulgated.

A few commenters suggested that the final rule require mine operators to develop a written plan for eliminating overexposures, so that both miners and MSHA will be aware of the specifics of how a mine operator intends to abate noise overexposures at a particular mine. MSHA does not believe that requiring a written plan under the final rule enhances health protection beyond that afforded by an action level and implementation of all feasible controls. MSHA is also mindful of its responsibilities under section 103(e) of the Mine Act, which cautions the Agency not to impose an unreasonable burden on mine operators, especially those operating small businesses, when requesting information consistent with the underlying purposes of the Mine Act. It should be noted, however, that § 62.110(d) of the final rule requires mine operators to notify a miner whose noise exposure equals or exceeds the action level of the corrective action being taken to address that exposure.

Paragraph (b) of § 62.130 of the final rule, like proposed § 62.120(c)(2)(i), requires that if feasible engineering and administrative controls fail to reduce a miner's exposure to the permissible exposure level, the mine operator must continue to use the controls to reduce the miner's exposure to as low a level as is feasible.

Section 62.130(c) of the final rule adopts proposed § 62.120(e) and provides that at no time must a miner be exposed to sound levels exceeding 115 dBA. Some commenters found the proposal somewhat confusing, questioning whether there is a complete prohibition against exposure to noise above 115 dBA or whether, under proposed Table 62–1 regarding reference durations, the rule permits a period of exposure to noise above this level that is incorporated into a miner's dose determination. MSHA intends the requirement of this paragraph to be applied as has the existing prohibition in metal and nonmetal regulations that no miner must be exposed to non-impulsive sound levels exceeding 115 dBA. A clarifying notation has been added to Table 62–1 that at no time must any excursion exceed 115 dBA. To avoid confusion, the term ''ceiling level,'' which was used in the proposal, has not been adopted in the final rule. MSHA notes that OSHA's noise standard does not use the term ''ceiling level.'' The preamble to OSHA's noise standard further indicates that OSHA's ''* * * current standard does not permit exposures above 115 dB, regardless of duration'' (46 FR 4078, 4132). In addition, to be consistent with exposure determinations under § 62.110(b)(2)(i), the final rule clarifies that exposure determinations under this paragraph must be made without adjustment for the use of any hearing protectors.

NIOSH's 1972 criteria document recommended a ceiling limit of 115 dBA. In its 1996 draft Criteria Document, NIOSH reaffirmed its recommendation of a 115 dBA limit. Under this draft recommendation, exposures to sound levels greater than 115 dBA would not be permitted regardless of the duration of the exposure. NIOSH indicated that recent research with animals indicates that the critical level is between 115 and 120 dBA. Below this critical level, the amount of hearing loss is related to the intensity and duration of exposure; but above this critical level, the amount of hearing loss is related only to intensity. MSHA proposed the 115 dBA sound level limit based on these recommendations, and also on the fact that MSHA's noise standard at metal and nonmetal mines currently includes this limit.

Commenters took various positions on whether 115 dBA is the correct level for maximum exposure. A number of commenters, however, believed that the proposed prohibition of noise exposure above 115 dBA would be too restrictive and unrealistic for the mining industry. Some of these commenters suggested that occasional exposures above this level are unavoidable when performing certain job tasks and that the level should include a specified allowable time limit for these exposures, ranging from 5 to 15 minutes. MSHA is not persuaded by these commenters' concerns. In fact, the 115 dBA limit has been in effect at metal and nonmetal mines for a number of years. Further, the potential damage to miners' hearing when exposed to sound at such levels is so great that it is not unreasonable to expect mine operators to take extra steps to prevent miners' exposures.

It must be emphasized that this provision prohibits exposures above 115 dBA for any duration, not as a time-weighted average. This means that Table 62–1, which includes reference durations of noise exposures at various sound levels, should not be read as allowing excursions above 115 dBA, even though the average over a quarter of an hour would not exceed 115 dBA. However, it should also be noted that MSHA intends to apply this prohibition as it has enforced the same limit under the metal and nonmetal standard. This means that miners may not be exposed to sound levels exceeding 115 dBA as measured using A-weighting and slow response. As a practical matter, there may be some exposure to sound above this level which is of such limited duration that it cannot be measured. Obviously, compliance and enforcement are affected by the limitations of the instrumentation used to measure sound.

Some commenters stated that older mining machinery as well as equipment such as pneumatic tools, jackleg drills, welding machines, and relief valves typically exceed the 115 dBA limit. MSHA is aware that there are noise sources in the mining industry, which may also include unmuffled pneumatic rock drills and hand-held channel burners, that produce sound levels which exceed 115 dBA. However, based on MSHA's experience, practically all of these noise sources can be managed with engineering controls and kept below the sound level of 115 dBA. For example, there is a muffler available for the jackleg drill, and burner tips are available for the hand-held channel burner, that in many cases will lower the sound level to below 115 dBA. Sound from other pneumatic tools can also be muffled.

In addition, mine operators should be aware that significant noise reductions

can be achieved by using alternative equipment, such as the diamond wire saw and water jet, instead of a hand-held channel burner. In the coal mining sector, for example, roof bolting machines have replaced stopers, which are hand-held pneumatic roof drills. The roof bolting machines produce much less noise than the stoper.

Some commenters requested that MSHA permit exposures to exceed 115 dBA when the noise source is a warning signal or an alarm. The Agency does not intend that the 115 dBA sound level limit apply to warning signals or alarms; the ability to hear these signals is critical to the safety of miners. However, alarm and warning signal sound levels must be integrated into the overall noise exposure of miners.

Several commenters objected to enforcing a ceiling level with personal noise dosimeters. They believed that shouting, bumping the microphone, or whistling could give false readings which may be interpreted as exceeding the 115-dBA level. As a practical matter, the fact that the indicator on a personal noise dosimeter shows that the 115-dBA sound level was exceeded does not mean that MSHA will take enforcement action. Rather, the duration of the sound level would need to be sufficient for it to exceed 115 dBA when measured using the slow response on a sound level meter, or on an equivalent type of instrument. This measurement procedure should also serve to eliminate concerns that impulse/impact noise would exceed the 115 dBA limit and result in a citation.

In the preamble to the proposed rule, MSHA requested comments on whether there should be an absolute dose ceiling, regardless of the economic feasibility of control by an individual mine operator. One commenter stated that it would be inappropriate to include a maximum dose ceiling in the final rule without taking feasibility considerations into account. As a result of the lack of scientific consensus on this issue, MSHA has determined that a separate provision for a dose ceiling is unnecessary. The 115-dBA sound level limit, in conjunction with the requirement for dual hearing protectors at a TWA_8 of 105 dBA in § 62.140 of the final rule, adequately protects the hearing sensitivity of miners.

The final rule, like the proposal, does not include a separate provision for impact or impulse noise. Presently, there is insufficient scientific data to support such a standard. MSHA is unaware of any effective sampling methodology for identifying and measuring sound at this level. Since industrial impulse and impact noise are almost always superimposed on a background of moderate-to-high levels of continuous noise, and since both types of noise may be harmful, MSHA believes that it is only reasonable to consider their effect together, rather than to treat each separately. Accordingly, under the final rule all sounds from 90 dBA to at least 140 dBA are to be included in the range of integration. Impact or impulse noise is therefore considered with continuous noise when determining a miner's noise exposure level.

Section 62.140 Dual Hearing Protection Level

This section of the final rule establishes requirements for the use of dual hearing protection. Included in this section is the requirement that the mine operator must provide and ensure that both an earplug-and an earmuff-type hearing protector are used simultaneously when a miner's noise exposure exceeds the dual hearing protection level of a TWA_8 of 105 dBA, or equivalently, a dose of 800% of that permitted by the standard during any work shift.

Two features of the final rule are slightly different from § 62.120(d) of the proposal. First, explicit language has been added that the dual hearing protector requirement is in addition to the actions required for noise exposure that exceed the permissible exposure level. The preamble discussion of proposed § 62.120(d) reflected this intent. This language has been added to § 62.140 of the final rule for the purpose of clarifying the requirements of this section, which are set forth separately from the section on the permissible exposure level.

In addition, the final rule also includes the range of sound levels, from 90 dBA to at least 140 dBA, which must be integrated in determining a miner's exposure under this section. The range is included in the definition of ''dual hearing protection level'' in final § 62.101. MSHA had proposed that a miner's noise exposure measurement integrate all sound levels between 80 dBA to at least 130 dBA during the miner's full work shift. MSHA decided, however, not to lower the range of integrated sound levels for a miner's dose determination under § 62.130 of the final rule regarding the permissible exposure level (see discussion of § 62.130). The dual hearing protection requirement of § 62.140 is directly related to § 62.130, in that it requires dual hearing protection in addition to engineering and administrative controls. A more detailed explanation of the range of integration is provided in the preamble discussion on § 62.110(b)(2)(ii), regarding noise exposure assessment.

The proposed dual hearing protection requirement generated many comments. The proposal was favored by some commenters, and a few who favored the use of dual hearing protection also suggested that MSHA reduce the dual hearing protection level to 100 dBA. Most commenters who opposed the proposal suggested that a single hearing protector with a sufficient noise reduction rating can attenuate sound levels and reduce miner exposures below the permissible exposure level. One commenter believed that MSHA should replace the proposal with performance-oriented language which would require the use of ''adequate'' hearing protection. Also, one commenter questioned the adequacy of the scientific studies upon which MSHA based the proposed requirement.

MSHA is adopting the proposed dual hearing protection requirement because the scientific evidence shows that the additional noise reduction that is gained by the use of dual hearing protection will protect the hearing sensitivity of miners who are exposed to high sound levels. In addition, the scientific evidence supports MSHA's conviction that a TWA_8 of 105 dBA (800%) is an appropriate level above which dual hearing protection should be required, since this level of noise exposure can quickly damage the hearing sensitivity of the exposed miner. MSHA is also relying upon the research which shows that a single hearing protector may not adequately protect workers whose noise exposures exceed a TWA_8 105 dBA.

The research discussed in the preamble to the proposal (Berger, 1984; Berger, 1986; and Nixon and Berger, 1991) shows that dual hearing protectors provide significantly greater protection than a single hearing protector and is effective for protecting workers above a TWA_8 of 105 dBA.

For example, Berger, in EARLOG 13 (1984), has shown that the use of dual hearing protectors provides greater noise reduction, on the order of at least 5 dB greater than the reduction of either hearing protector alone. Berger recommends dual hearing protectors whenever the TWA_8 exceeds 105 dBA. In addition, Nixon and Berger (1991) report that earplugs worn in combination with earmuffs or helmets typically provided more attenuation than either hearing protector alone.

The use of dual hearing protection is also required by the U.S. armed services when workers are exposed to high sound levels. Additionally, MSHA's policy under the existing standards for

coal, metal, and nonmetal sectors requires the use of dual hearing protectors whenever the noise reduction of a single hearing protector does not reduce the miner's noise exposure to within the permissible exposure level. Current metal and nonmetal policy indicates the need to consider dual hearing protection specifically at sound levels exceeding 105 dBA where hand-held percussive drills are used. Also, dual hearing protection is recommended by policy where hand-held channel burners and jumbo drills are used, but no sound level is specified at which such protection should be used.

Regarding the commenters who supported the requirement for dual hearing protection, but requested that MSHA reduce the dual hearing protection level to a TWA_8 of 100 dBA, the Agency does not believe that there is adequate scientific evidence to support lowering the proposed level. Rather, the Agency is relying upon the scientific studies noted above which recommend dual hearing protectors whenever the TWA_8 exceeds 105 dBA.

With respect to the use of canal cap-type hearing protectors under this paragraph of the final rule, MSHA notes that it considers a canal cap-type hearing protector to be neither an earplug-type or earmuff-type hearing protector. A canal cap hearing protector is an acceptable single-type hearing protector but cannot be combined with either a plug-type or muff-type protector, because a proper seal or fit cannot be achieved. Therefore, the Agency intends that a canal cap-type hearing protector may not be used for compliance with the dual hearing protector requirements of this paragraph.

Several commenters believed that the proposed dual hearing protection requirement created a safety hazard because the hearing protectors would prevent a miner from hearing warning signals, audible alarms, verbal communication, and roof talk. MSHA believes that the use of dual hearing protectors would not create an additional safety hazard because the high sound levels generated by some mining equipment will interfere with the detection of roof talk, verbal communications, and audible alarms. In fact, research by Prout, 1973, discussed under § 62.160 of the preamble, shows that the noise emitted by mining equipment operating in close proximity to a miner's assigned work area masks roof talk. Moreover, if hearing protectors are not worn, a temporary threshold shift will impair a miner's ability to hear roof talk, verbal communications, or warning signals when the mining equipment ceases to operate. Because the use of dual hearing protectors will minimize the extent of any temporary threshold shift experienced during exposure to high sound levels, MSHA expects that the dual hearing protection will be used in high sound level environments and removed in quiet environments. This procedure would enhance safety.

A few commenters who opposed the proposal for dual hearing protection were concerned that the use of earmuffs may interfere with the use of other personal protective equipment such as hard hats, safety glasses, and welding shields. MSHA believes that the proper selection and combination of hearing protectors should alleviate this concern. For example, newer models of ear muffs, which are readily available, are specifically designed to be used with hard hats. Other models which were specifically designed for use with safety glasses or welding shields are also readily available.

In response to the commenter who expressed a concern regarding compliance with this section under the circumstances where a medical condition would preclude the use of a hearing protector, MSHA notes that the dual hearing protection requirement of this section must be provided in accordance with § 62.160. Section 62.160(a)(5) allows the miner to choose a different hearing protector if wearing the selected hearing protectors is subsequently precluded due to a medical pathology of the ear.

Section 62.150 Hearing Conservation Program

Under the proposed rule, the individual elements of a hearing conservation program were located in several separate sections. ''Hearing conservation program'' was defined in § 62.110 of the proposal as a ''generic reference'' to the requirements in proposed §§ 62.140 through 62.190, which addressed audiometric testing requirements and miner notification and reporting requirements.

In the interest of clarity and in response to commenters, this section consolidates the elements of a hearing conservation program in one location in the final rule, rendering a definition of ''hearing conservation program'' unnecessary, and the proposed definition has therefore not been adopted in the final rule. In addition to the elements referenced in the proposed definition of ''hearing conservation program,'' this section also includes as program elements a system of monitoring under § 62.110, the use of hearing protectors under § 62.160, miner training under § 62.180, and recordkeeping under § 62.190. This new section is consistent with OSHA's definition of a hearing conservation program.

MSHA received a number of general comments on specific elements that commenters believed should be included in any hearing conservation program. MSHA also received many comments on specific requirements that were proposed for each of those elements, such as appropriate audiometric test procedures and the use and maintenance of hearing protectors. Comments addressing the elements that should be included in a hearing conservation program are discussed under this section of the preamble. Comments which address the specific requirements for each program element are discussed under the section where the specific requirements are located. For example, a comment that addresses the role of hearing protectors in a hearing conservation program is discussed here, while a comment dealing with fitting of hearing protectors is discussed in the preamble under § 62.160.

None of the commenters supported MSHA's proposed definition of ''hearing conservation program.'' Some commenters pointed out that the proposed definition constituted an audiometric testing program only, not a hearing conservation program. These commenters recommended that the use of hearing protectors should also be included. A number of commenters recommended that MSHA adopt the traditional definition of a hearing conservation program used by OSHA, stating that any other definition would be confusing. These commenters stated that the term ''hearing conservation program'' has been used in general industry since the 1970's to refer to a comprehensive package of actions, including noise exposure monitoring, noise controls, hearing evaluation and protection, training, and recordkeeping.

MSHA agrees with the commenters who believed that the proposed definition of ''hearing conservation program'' was too narrow and that adoption of a definition that was similar in scope to OSHA's would avoid unnecessary confusion. Accordingly, the elements identified for inclusion in a hearing conservation program under this section of the final rule are, with one exception, consistent with OSHA's definition of ''hearing conservation program.''

Like OSHA's noise standard, MSHA's final rule does not include the use of engineering and administrative controls as an element of a hearing conservation

program. However, § 62.130 of the final rule requires the implementation of all feasible engineering and administrative noise controls whenever a miner's noise exposure exceeds the permissible exposure level. Therefore, although a ''hearing conservation program'' under the final rule does not specifically include the use of engineering and administrative controls, the application of such controls is required to remedy miner overexposure. MSHA regards an effective hearing conservation program as a supplement to the first line of defense against noise overexposures, which is the implementation of all feasible engineering and administrative noise controls.

This section of the final rule provides that, when a miner's noise exposure equals or exceeds the action level of TWA_8 of 85 dBA, the mine operator must promptly enroll the miner in a hearing conservation program. This requirement is derived in part from proposed requirements in § 62.120(b)(2) and (c)(1), which would have provided for a miner's enrollment in a hearing conservation program if the miner's noise exposure exceeded either the action level or the permissible exposure level. Proposed § 62.120 would also have required miner training, hearing protector use, and a system of monitoring, but did not specifically designate those items as elements of a hearing conservation program, as does the final rule.

Paragraphs (a) through (e) of § 62.150 of the final rule enumerate the elements of a hearing conservation program, which include a system of monitoring, the use of hearing protectors, audiometric testing, training, and recordkeeping. Each paragraph also refers to the specific section of the final rule where the detailed requirements of each program element are located.

Paragraph (a) of § 62.150 of the final rule requires that the hearing conservation program include a system of monitoring in accordance with § 62.110, which provides that the system of monitoring must evaluate each miner's noise exposure sufficiently to determine continuing compliance with the requirements of part 62. This requirement is derived from proposed § 62.120(f), which would have required a system of monitoring, but which did not include monitoring as an element of the hearing conservation program. A more detailed discussion of exposure monitoring is included in the preamble under § 62.110.

Paragraph (b) of § 62.150 of the final rule includes the use of hearing protectors, in accordance with § 62.160, as an element of the hearing conservation program. This requirement is derived from proposed § 62.120(b)(3). A detailed discussion of hearing protectors is found under § 62.160 of the preamble.

Paragraph (c) of § 62.150 of the final rule includes audiometric testing, in accordance with §§ 62.170 through 62.175 of the final rule, as a hearing conservation program element. As discussed above, audiometric testing would have been included as a program element under the proposal, and has been adopted as an element in the final rule. Detailed discussion of audiometric testing, test procedures, evaluation of audiograms, and other related issues can be found in the preamble under §§ 62.170 through 62.175.

Paragraph (d) of § 62.150 of the final rule includes miner training, to be conducted in accordance with § 62.180 of the final rule, as an element of the hearing conservation program. Under § 62.120(b)(1) of the proposal, training would have been required for miners whose exposure exceeded the action level, but the proposed rule would not have included training as a hearing conservation program element. Extensive discussion of miner training under the final rule can be found in the preamble under § 62.180.

Finally, paragraph (e) of § 62.150 of the final rule provides that the hearing conservation program must include recordkeeping in accordance with § 62.190 of the final rule. Issues related to access to records, maintenance, and retention are discussed in detail in the preamble under § 62.190.

Section 62.160 Hearing Protectors

Section 62.160 specifies the requirements for hearing protectors. The final rule is essentially identical to proposed § 62.125 with a few minor changes. Proposed § 62.125 required that miners have a choice of one plug-type and one muff-type hearing protector. Under § 62.160(a)(2) of the final rule, miners must be allowed to choose from at least two of each type. In the event that, under § 62.140, dual hearing protection is required, miners must be allowed to choose one of each type from the selection offered under § 62.160(a)(2).

Under §§ 62.120 and 62.125 of the proposal, mine operators would have been required to ensure that miners wore hearing protection in specific circumstances: when a miner's exposure exceeded the permissible exposure level; or when a miner's exposure exceeded the action level and the miner was determined to have a standard threshold shift or would have to wait 6 months before a baseline audiogram. The hearing protectors would have been required to be worn at any sound level between 80 and 130 dBA. In its place, § 62.160(b) of the final rule specifies that mine operators must ensure that miners wear hearing protectors under similar circumstances. Under the final rule the mine operator must ensure that hearing protectors are worn by miners whenever their noise exposure exceeds the permissible exposure level, either until feasible engineering and administrative controls have been implemented, or despite the use of all feasible engineering and administrative controls. Additionally, mine operators must ensure that a miner whose exposure equals or exceeds the action level wears hearing protectors, either if the miner has experienced a standard threshold shift or more than 6 months will pass before a baseline audiogram can be conducted. The final rule, however, does not adopt the provision proposed at § 62.125(b) that in those cases where hearing protectors are required to be worn, the mine operator must ensure that the protector is worn by the miner when exposed to sound levels required to be integrated into a miner's noise exposure measurement.

The final rule adopts the proposed provisions that the hearing protector is to be fitted and maintained in accordance with the manufacturer's instructions; that hearing protectors and necessary replacements are to be provided by the mine operator at no cost to the miner; a miner whose hearing protector causes or aggravates a medical pathology of the ear must be allowed to select a different hearing protector from among those offered.

Selection of Hearing Protectors

MSHA's existing noise standards require mine operators to provide adequate hearing protectors but do not specify that a variety of hearing protectors be offered. OSHA's noise standard requires that employees be allowed to select from a variety of suitable hearing protectors provided by the employer but does not define variety. OSHA states in the 1981 preamble to its noise standard that ''[T]he company must make a concerted effort to find the right protector for each worker-one that offers the appropriate amount of attenuation, is accepted in terms of comfort, and is used by the employee.''

MSHA considered several studies and comments before concluding that the minimum selection appropriate for miners consists of at least two types of earmuffs and two types of earplugs that would provide adequate noise reduction.

The National Hearing Conservation Association's Task Force on Hearing Protector Effectiveness (Royster, 1995) recommends that employers consider numerous criteria when selecting the variety of hearing protectors to be made available to their workers. According to the Task Force, the most important criterion for choosing a hearing protector is ''the ability of a wearer to achieve a comfortable noise-blocking seal which can be maintained during all noise exposures.'' Other criteria include the hearing protector's reduction of noise, the wearer's daily noise exposure, variations in sound level during a work shift, user preference, communication needs, hearing sensitivity of the wearer, compatibility with other safety equipment, the wearer's physical limitations, climate, and working conditions.

Berger (1986) stresses the importance of comfort, arguing that if a miner will not wear a highly rated but uncomfortable hearing protector, its actual effectiveness is greatly reduced (or nonexistent). Conversely, the miner may wear a comfortable but less effective hearing protector consistently, thereby gaining greater effective protection. Berger (1981) also recommends that an employee should have two weeks to try out an adequate hearing protector and select another one if the original selection does not perform satisfactorily.

MSHA believes that such a trial period further encourages miners' acceptance of the use of hearing protectors and may be necessary for miners to determine if the hearing protectors they have selected are comfortable and appropriate for prolonged periods of use. If significant discomfort occurs, MSHA encourages the mine operator to allow the affected miner to select an alternate hearing protector. In any case, provision of an alternative hearing protector is mandatory under the final rule if required by a medical condition or because the miner has experienced a standard threshold shift.

Mine conditions such as dust, temperature, and humidity can cause one type of hearing protector to be more comfortable than another. For example, even under normal mining conditions, some miners may experience problems with earmuffs because of a buildup of perspiration under the seals. The report *Communication in Noisy Environments* (Coleman et al., 1984) finds earmuffs to be better suited to mining conditions than earplugs, because helmet-mounted earmuffs are comfortable, easy to fit and remove, effective, and hygienic. However, compressible foam earplugs interfere less with communication and awareness of surroundings than do earmuffs, and may be more comfortable in hot, humid conditions.

Comfort alone does not determine a miner's choice of hearing protector. Coleman et al. (1984) state that other factors, such as:

> * * * concern with hygiene, belief in (real or presumed) communication difficulties, and social constraints * * * can influence the extent to which workers will use the protection provided * * * Sweetland (1981) found concern about communication difficulties to be a major factor in mine workers' acceptance of protectors.

One commenter suggested that because earmuffs might not provide adequate noise reduction, mine operators should be allowed to require specific hearing protectors to ensure that their employees receive the best protection. MSHA agrees that employees should receive the best available protection.

Accordingly, the final rule does not prevent mine operators from selecting among the wide variety of styles, types, and noise-reduction ratings available in hearing protectors which would afford miners the best protection available. Moreover, MSHA maintains that the requirement that mine operators encourage the safe and effective use of hearing protectors gives them incentive to provide an appropriate variety of types. MSHA further maintains that if miners are allowed to choose from a selection of hearing protectors, particularly if given appropriate training, as required under this rule, they will be more likely to wear and maintain their hearing protectors for optimal noise reduction.

The comment that ''miners will only wear plugs that are comfortable'' represents the consensus view, and a number of comments to the proposed rule noted that a choice from at least one of each type is inadequate. On the basis of comments reviewed and the international consensus (including the U. S. armed services) that workers should choose from a selection of several hearing protectors, MSHA has concluded that the use of hearing protectors will be better accepted by miners if they have the opportunity to choose appropriate hearing protectors from an expanded, but not unlimited, selection. Thus, the final rule requires that at least two plug-type and two muff-type protectors be offered to miners.

Hearing Protectors for Miners With Significant Hearing Loss

Hearing loss due to noise and aging both affect the ear at higher sound frequencies, and most earplugs and earmuffs are more effective at reducing sounds of higher than lower frequencies. As a result, a miner with significant hearing loss who is wearing a normal hearing protector would experience even further reduction in hearing at the higher frequencies. In this situation, the miner could run the risk of not hearing or comprehending otherwise audible warnings.

Pfeiffer (1992) supports this reasoning, suggesting that greater care be exercised when selecting hearing protectors for workers experiencing hearing loss. He notes that it is important not to overprotect workers, because if workers experience difficulty in communicating, they will be reluctant to wear hearing protectors.

An alternative is the communication-type hearing protector, which combines an earmuff with a radio receiver so that the wearer can hear important conversations or warnings. Although no comments were received on the use of communication-type hearing protection devices for hearing impaired miners, MSHA cautions mine operators against their use in very high noise areas because the sound level transmitted into the ear cup may be hazardous. Some manufacturers of communication-type hearing protectors, however, have placed limiters in the electronics to prevent potentially hazardous sound levels being transmitted.

Even though some researchers have indicated that using a hearing protector may cause communication problems for a hearing impaired miner, MSHA has determined not to require special hearing protectors and not to limit the choices of hearing protectors for the hearing impaired. As a result, the rule allows mine operators the maximum flexibility in addressing this matter in ways appropriate to local conditions and individual needs.

Use of Hearing Protectors Above 80 dBA

Under § 62.125(b) of the proposal, the use of hearing protectors would have been required when the sound levels exceed those which were proposed to be integrated into the noise exposure measurement. This requirement has not been adopted in the final rule. This provision, while intended to require the use of hearing protectors above 80 dBA when the miner's exposure exceeded the permissible exposure level, would in effect have required hearing protector usage above 80 dBA, and some commenters to the proposed rule were concerned that this would result in all miners having to wear hearing protectors throughout every shift. A number of commenters who objected to

the proposal noted that miners should be permitted to remove hearing protectors when the sound level falls below 80 dBA, and that MSHA should recommend wearing hearing protectors above 85 dBA and require them above 90 dBA. One commenter noted that it is impossible to enforce the use of hearing protectors based on the sound level unless there is a practical means of knowing what the sound level is at all times, in order to know when it exceeds the threshold level.

MSHA agrees with the commenters who pointed out that the provision in the proposal would have required hearing protector usage above 80 dBA, which would have resulted in miners having to wear hearing protectors throughout every shift. MSHA did not intend for the use of hearing protectors to be based on the threshold level, thus the proposed provision has not been adopted. The final rule does set forth specific circumstances under which mine operators must ensure that miners use hearing protectors: when the miner's noise exposure exceeds the permissible exposure level, until engineering and administrative controls have been implemented, or despite the use of such controls; and when the miner's exposure is at or above the action level, and the miner has incurred a standard threshold shift, or more than 6 months will pass before the miner's baseline audiogram can be conducted.

Use of hearing protectors is not based on the threshold levels. MSHA has determined that it is the responsibility of the mine operator to determine when beyond the specific requirements of the final rule hearing protectors should be worn. This is one goal of the mine operator's monitoring program.

Fitting of Hearing Protectors

Section 62.160(a)(3) of the final rule addresses the fitting of hearing protectors, and is identical to § 62.125(c) of the proposed rule. The final rule requires that mine operators ensure that hearing protectors be fitted in accordance with manufacturer's instructions.

Many commenters supported the requirement that hearing protectors be properly fitted. A number of commenters observed that earplugs vary more from laboratory data than earmuffs because earplugs are harder to fit properly. Several commented that proper fit depends upon the wearer's ear canal size and shape, manual dexterity, and motivation. Others stated that people often select a comfortable earplug that does not effectively seal the ear canal, so that it provides little protection. MSHA recognizes a lack of consensus on fitting procedures but notes that research demonstrates that proper fitting can increase the effectiveness of hearing protectors.

For example, Chung et al. (1983) report that the major factor in the performance of earmuffs is the fit, which is dependent on headband tension. They report that, while adequate tension is necessary for effective noise reduction, high headband tension also generally causes discomfort. Chung et al. concluded that proper fitting can increase the effectiveness of earmuffs.

MSHA considered the use of audiometric data base analysis the long-term collection of audiograms to determine the effectiveness of hearing protectors and concluded that audiometric data base analysis is inappropriate for determining fit because it does not provide immediate feedback on individual fit. Audiometric data base analysis requires multiple subjects, and is useful for determining the adequacy of the hearing conservation program (protecting the hearing sensitivity of a group of workers) but not the adequacy in protecting an individual. Furthermore, audiometric data base analysis requires audiograms to be conducted on an annual basis. If no interim protection is provided between audiograms, a miner's hearing sensitivity could be irreversibly damaged.

As stated in the preamble to the proposal, MSHA agrees that proper fitting is necessary to ensure optimal effectiveness of hearing protectors and that it should not be left solely up to the individual miner to determine if the hearing protector fits properly.

Some commenters saw the need for an accurate, reliable, and inexpensive method of testing the fit of earplugs and earmuffs. MSHA agrees that such a fit test for earplugs and earmuffs is needed in order to determine the amount of protection an individual obtains from a hearing protector, but none exists at this time. MSHA believes that, until such a test is developed, the manufacturer's instructions should be used to fit earmuffs and earplugs.

Some commenters noted that not all manufacturers' instructions are adequate to ensure proper fit. In addition, one commenter was opposed to mandating the manufacturers' instructions, claiming that doing so was an unlawful delegation of MSHA's responsibility. MSHA disagrees. There are many instances of regulations requiring that manufacturers' instructions be followed, because the manufacturer of the instrument, machine, or protective device is the most knowledgeable of the features, performance, and use of the device. For example, the safety standards for explosives at metal and nonmetal mines require that initiation systems be used in accordance with the manufacturer's instructions. Therefore, in light of the wide variety of hearing protectors available, the broad range of subjective fitting procedures, and the lack of consensus on an objective fitting method, MSHA has concluded that the manufacturers' instructions provide the best model for fit at this time.

One commenter noted that the best fit is obtained when individualized training is available to the user. MSHA agrees that training is a key element in the fitting of hearing protectors, as reflected in the final rule (see § 62.180).

Maintenance of Hearing Protectors

Section 62.160(a)(3) of the final rule requires that mine operators ensure that a hearing protector is maintained in accordance with the manufacturer's instructions. Many manufacturers recommend soap, warm water, and careful rinsing to clean the hearing protector. Manufacturers also discourage solvents and disinfectants as cleaning agents because they can cause skin irritation and some can damage the hearing protector. In most cases, the proper insertion technique for earplugs includes proper basic hygiene cleaning the hands before rolling or inserting earplugs.

MSHA reviewed standards of hearing protector maintenance among the U.S. armed forces and the international community. The consensus of the standards was that damaged or deteriorated hearing protectors must be replaced. Research also demonstrates that non-disposable hearing protectors should be replaced between 2 and 12 times per year (Berger, 1980). Constant wear causes hearing protectors to lose their effectiveness. For example, headbands on earmuffs can lose their compression ability; the soft seals surrounding the ear cup on earmuffs can become inflexible; and plastic earplugs can develop cracks, shrink, or lose their elasticity. All types are susceptible to contamination.

MSHA recognizes that it is difficult to keep hearing protectors clean in the mining environment. Using contaminated hearing protectors, however, may contribute to a medical pathology of the ear. Once the skin has been abraded or inflamed, microorganisms in the ear or on a hearing protector can invade the skin. When hearing protectors appear to be the cause of inflammation of the external ear canal (otitis externa), the

hearing protector is often found to be contaminated with an irritating or abrasive substance. This situation can be corrected with proper cleaning of the hearing protector before use.

As noted in the proposed rule, miners have been known to alter hearing protectors to make them more comfortable. Such alterations have included cutting off the ends of earplugs or stretching out the head-band on earmuffs to decrease the tension. These alterations can significantly decrease the hearing protector's effectiveness. In addition, hearing protectors can be damaged from exposure to heat, cold, ozone, chemicals, or dirt. Because such conditions are common in the mining industry, hearing protectors must be periodically checked and replaced if damage is found. While MSHA recognizes that it is difficult to keep hearing protectors clean and undamaged in the mining environment, the final rule requires mine operators to ensure that hearing protectors are maintained in accordance with manufacturers' instructions.

Replacement of Hearing Protectors

Section 62.160(a)(4) of the final rule is identical to proposed § 62.125(d). This section requires the mine operator to provide the hearing protector and necessary replacements at no cost to the miner. MSHA intends for this section to include repairs to a miner's hearing protector when it becomes damaged or deteriorated to the point that the required protection is compromised. Commenters agreed that this should be the case.

Replacement of hearing protectors would take place according to the manufacturer's instructions upon finding any deterioration that could adversely affect the hearing protector's effectiveness or upon diagnosis of a medical pathology caused or aggravated by the hearing protector provided (see following section for discussion of medical pathology). For example, manufacturers of disposable earplugs may state in their instructions that the earplugs should be replaced after each use.

Replacement Due to Medical Pathology

Section 62.160(a)(5) of the final rule is identical to proposed § 62.125(e). This section requires the mine operator to provide an individual miner with a different, more appropriate, type of hearing protector when presented with evidence of a medical pathology (for example, otitis externa or contact dermatitis). The definition of ''medical pathology'' is intended to cover injuries. If, for example, a miner suffered a burn in the ear canal and could no longer use the earplugs he or she had earlier selected, he or she must be allowed to select an earmuff. Comments to the proposed rule indicated a consensus that miners should be permitted to change their choice of hearing protector on the basis of the opinion of a medical professional. A preliminary diagnosis of medical pathology by a family physician or nurse must be accepted by a mine operator for the purposes of this requirement.

One commenter stated that people wearing hearing protectors are prone to ear infections. Berger (1985), however, reports that although there are some preexisting ear canal conditions and environmental conditions that prevent the use of certain hearing protectors, in general, otitis externa occurs in approximately 2% of both users and nonusers of hearing protectors. He therefore concludes that regular wear of hearing protectors does not increase a person's chances of contracting otitis externa. In any case, disposable hearing protectors may be warranted for individuals prone to infections.

MSHA's existing noise standards do not specifically address the replacement of hearing protectors. OSHA's noise standard simply requires that hearing protectors be replaced as necessary. Based upon the research and several international standards, MSHA believes that hearing protectors need to be replaced whenever a medical pathology is present. Such replacements must also be available at no cost to the miner.

Circumstances Requiring the Use of Hearing Protection

Section 62.160(b) of the final rule sets forth the circumstances in which mine operators must ensure that hearing protectors are worn. Section 62.160(b) incorporates requirements of proposed §§ 62.125(b)(2) and 62.125(c)(2)(iii). Section 62.160(b) requires that mine operators ensure the use of hearing protectors when the miner's exposure exceeds the permissible exposure level before the implementation of all feasible engineering and administrative controls, or if the miner's exposure continues to exceed the permissible level despite the use of all feasible controls. Sections 62.160(c)(1) and (c)(2) require that mine operators ensure the use of hearing protectors when the miner's noise exposure is at or above the action level and the miner has experienced a standard threshold shift or it takes more than 6 months to conduct the baseline audiogram.

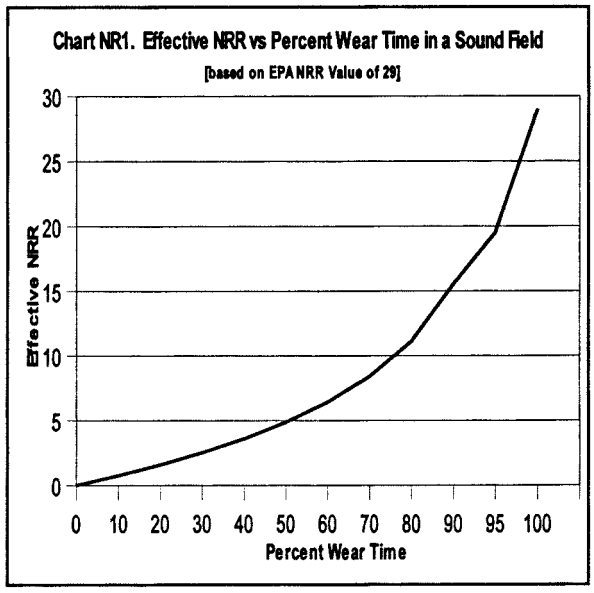
The proposal's requirement that the mine operator ensure the use of hearing protectors under particular circumstances generated comments concerning convenience, comfort, and noise reduction. One commenter to the proposed rule noted that to meet the proposed requirement, miners would need to wear hearing protectors throughout entire shifts, which would be very inconvenient.

Some research supports the assumption that miners would resist wearing hearing protectors as prescribed. Despite mandatory use of hearing protectors, most workers in the Abel (1986) study admitted to wearing their hearing protectors less than 50% of the time. Further, many modified their hearing protectors to provide greater comfort. Many of the modifications lowered the effectiveness of the hearing protectors.

As noted by Berger (1981), persons with medical pathologies of the ear are more likely than others to resist wearing hearing protectors because of pain or extreme discomfort associated with their use. Berger suggests that persons who are more prone to otitis externa would need to be monitored more closely for failure to wear their hearing protectors.

As many have emphasized, hearing protectors are only effective if they are worn. Their effectiveness is diminished if they are not worn for the duration of any exposure. Chart NR1, below, illustrates that the amount of noise reduction provided is directly dependent upon the proportion of exposed time during which the hearing protector is worn.

For example, if a hearing protector with a noise reduction rating (NRR) of 29 dB is worn during only half the exposure time, the wearer will effectively obtain only about 5 dB of noise reduction. A noise reduction rating of 29 dB is among the highest reported by hearing protector manufacturers; yet, if a hearing protector with this rating is not worn 100% of the time that the wearer is exposed to noise, it is no more effective than a much lower-rated protector.



Many commenters oppose mandatory use of hearing protectors because they believe that they would interfere with the aural detection of warning signals and alarms at mine sites. Also, some commenters believe that the use of hearing protectors hampers an underground coal miner's ability to hear sounds generated by changing stresses in the geologic structure of the mine—commonly known as ''roof talk.'' MSHA acknowledges that miners need to be aware of the location and movement of equipment in the mining environment. These commenters stated that the ability to hear these sounds allows miners to retreat from an unsafe area before the roof collapses, saving their lives and the lives of others wearing hearing protectors. These commenters submitted anecdotal information to MSHA in support of their position. Other commenters were concerned that hearing protectors limit the ability of miners to communicate, hear warning signals, and properly operate mining machinery. Still others, however, stated that miners can hear roof talk while wearing hearing protectors, and that roof fall accidents could not have been prevented if hearing protectors had not been worn.

The rulemaking record contains evidence from which MSHA concludes that for persons with normal hearing, the use of hearing protectors will not interfere with the aural detection of warning signals and alarms at mine sites. Nixon and Berger (1991), have concluded that ''[h]earing protection devices equally attenuate the levels of both the noise of the environment and auditory signals. An auditory warning signal may sound different when a hearing protection device is worn, yet recognition is ordinarily the same whether the ears are protected or unprotected.'' Prout et al. (1975), found that hearing protectors do not generally prevent a miner from hearing and analyzing roof talk when the noise level is high enough to require hearing protectors, but they diminish the ability to interpret roof warning signals in quiet. Thus hearing protectors should not be worn in quiet conditions. In addition, Berger (1986) found that the use of hearing protectors by persons with normal hearing had no significant effect on the ability to detect warning signals and that for persons with non-normal hearing, ''[w]arning sounds may be adjusted in pitch and loudness to achieve optimum perceptibility.'' Berger (1986) also referenced additional studies which showed that the use of hearing protectors reduced rather than increased the number of industrial mishaps.

The U.S. armed services and many international communities have specified sound levels above which hearing protectors must be worn. However, MSHA concludes that requiring specific trigger levels for hearing protectors in specific circumstances would be burdensome and require mine operators to conduct a comprehensive survey on each piece of equipment. Instead, the Agency is taking the more practical approach of requiring mine operators to ensure through their policies that hearing protectors are worn whenever noise-producing equipment is operating in the miner's work area and that miners are permitted to remove their hearing protectors in areas with low sound levels. This should minimize communication difficulties and the sense of isolation caused by wearing hearing protectors in such areas.

The final rule does not adopt proposed § 62.120(b)(3), which would have required mine operators to provide hearing protection, upon request, to a miner whose exposure exceeded the action level. Because the final rule requires mine operators to enroll miners whose exposures equal or exceed the action level, and hearing protectors are provided to miners as a part of that program, the proposed requirement is unnecessary, and has not been adopted in the final rule.

Section 62.170 Audiometric Testing

This section of the final rule establishes requirements for the audiometric testing conducted as part of the hearing conservation program under § 62.150 of the final rule. Included in this section are specific qualification requirements for persons who conduct audiometric testing; a requirement that audiometric testing performed under this part be offered at no cost to the miner; and procedures for baseline audiograms, annual audiograms, and revised baseline audiograms.

The requirements in this section of the final rule are nearly identical to the requirements of proposed § 62.140, with a few relatively minor changes that are described in detail below. This section requires that audiometric tests performed to satisfy the requirements of part 62 be provided by the mine operator at no cost to the miner, and be conducted by a physician or an audiologist, or by a qualified technician under the direction of a physician or an audiologist. Section 62.101 of the final rule defines ''audiologist'' as a

professional specializing in the study and rehabilitation of hearing, who is certified by the American Speech-Language-Hearing Association or licensed by a state board of examiners. ''Qualified technician'' is defined in § 62.101 of the final rule as a technician who has been certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC) or another recognized organization offering equivalent certification. A number of comments were received regarding the appropriate qualifications for audiologists or technicians who perform audiometric testing. These issues are discussed in greater detail in the preamble under § 62.101, addressing the definitions provided in that section.

Commenters disagreed as to what qualifications were necessary for physicians performing audiometric testing. Some commenters were concerned that physicians may not have the specific knowledge necessary to conduct audiometric testing, while other commenters believed that physicians were appropriately qualified. Several commenters stated that many, if not most, physicians do not have the training, the expertise, or the equipment to perform the audiometric testing called for under this part. Some commenters suggested that physicians conducting audiometric testing under the final rule be required to be board-certified otolaryngologists; others were of the opinion that the final rule should require that physicians conducting the testing have expertise in hearing and hearing loss. Several commenters preferred a requirement for both certification and licensure or that the physician be an otolaryngologist or an otologist. However, MSHA recognizes that many miners working in outlying areas may not have easy access to an audiologist who is both licensed and certified.

The final rule does not adopt the suggestion of some commenters that minimum qualifications be included in the rule for physicians who conduct audiometric testing. MSHA recognizes that a license to practice medicine does not guarantee that a physician has the specialized training or experience needed to conduct audiometric testing, evaluate audiograms, and supervise those technicians who perform such activities. However, states enforce stringent medical licensing requirements, and the medical profession maintains a high degree of accountability for physicians and has established strict ethical standards for medical practitioners. In light of these controls, the Agency expects physicians to exercise professional judgment in assessing whether they possess the experience and qualifications to conduct audiometric testing and evaluate audiograms. The final rule therefore does not adopt commenters' suggestions that additional licensing or qualification requirements be established for physicians conducting audiometric testing and evaluating audiograms.

The final rule adopts the proposed requirement that qualified technicians conducting audiometric tests be under the direction or supervision of a physician or an audiologist. Although the final rule does not require that the physician or audiologist be present when the technician conducts the audiometric testing, the physician or audiologist must oversee the activities of the technician enough to ensure adherence to the appropriate test procedures.

This section provides that all audiometric tests performed pursuant to part 62 must be provided by the mine operator at no cost to the miner. This requirement essentially adopts the proposed requirement that participation in a hearing conservation program would be provided by the mine operator at no cost to the miner. The proposed elements of a hearing conservation program would have included the annual audiometric testing and required follow-up examinations and actions.

Baseline Audiogram

The requirements in paragraphs (a)(1) through (a)(3) of § 62.170 of the final rule are derived from virtually identical requirements in proposed § 62.140(b). Under these requirements:

(1) A miner enrolled in a hearing conservation program must be offered an audiometric test within specified time periods to establish a valid baseline audiogram;

(2) The mine operator must provide the miner with a 14-hour quiet period prior to the baseline audiogram; and

(3) Revisions in the miner's baseline audiogram are not permitted because of changes in the miner's enrollment status in the hearing conservation program. However, a new baseline may be established for a miner who is away from the mine for more than 6 consecutive months.

Unlike the proposal, the final rule allows the use of hearing protectors as a substitute for the 14-hour quiet period.

Commenters who addressed the issue of audiometric testing generally acknowledged the need for a valid baseline audiogram as part of an effective hearing conservation program. However, commenters disagreed on whether audiometric testing under the final rule should be mandatory and on the appropriate time frame for establishing the miner's baseline. Some commenters suggested pre-employment audiograms be used as the baseline.

The final rule, like the proposal, requires mine operators to offer miners whose noise exposure exceeds the action level the opportunity for audiometric testing to establish a baseline and at least annually after the baseline has been established. The proposed rule would have also required, under § 62.120(c)(2)(ii), that mine operators ensure that a miner whose exposure to noise exceeded the permissible exposure level actually submitted to the audiometric testing offered as part of the hearing conservation program. MSHA proposed this mandatory testing requirement for several reasons, including a concern that without mandatory testing, standard threshold shifts and reportable hearing losses would go undetected. MSHA was also concerned that a voluntary program might have a low rate of participation. Finally, the Agency was concerned that unless participation was mandatory, the costs of miner testing would provide an incentive for mine operators, who will bear the costs of such testing, to discourage miners from participating. MSHA recognized that this provision would be controversial for many in the mining community, and specifically solicited comments on this issue in the proposed preamble.

The mandatory audiometric testing requirement has not been adopted in the final rule, in response to a number of commenters who were opposed either to any type of mandatory audiometric testing or to placing the burden on the mine operator to ensure that the miner submit to such testing. Some commenters stated that mine operators could not force miners to take hearing examinations. These commenters believed that mine operators should be required to offer miners such testing, but should not be penalized if miners do not take advantage of the offer. Other commenters believed that MSHA should directly require miner participation in the testing, not put the responsibility on the mine operator to see that miners participate. Finally, one other commenter believed that forcing a miner to participate in an audiometric testing program may violate existing labor contracts.

A number of commenters supported the concept of mandatory audiometric testing. One commenter stated that audiometric testing is essential to assess an employee's hearing and determine future changes in hearing sensitivity.

This commenter further stated that the audiogram could therefore not be an optional medical evaluation, but is the keystone of a comprehensive hearing conservation program. Other commenters were of the opinion that if audiometric testing were voluntary, miners would be sent the wrong message and a mine operator's efforts to run an effective hearing conservation program would be undermined. These commenters further stated that if audiometric testing is voluntary and a miner refuses the offer of an audiogram, any hearing loss should be presumed to be non-work-related. Another commenter questioned whether a miner would have the right to refuse to participate in an audiometric testing program. This commenter stated that if a miner could refuse, mine operators would be placed at a disadvantage in monitoring work-related hearing loss, and be subject to unwarranted workers' compensation claims. This commenter was also concerned that, without mandatory audiometric testing, mine operators would be unable to collect accurate data to identify hearing-related problems, hampering mine operators' ability to take appropriate corrective action to provide a healthier workplace.

MSHA notes that the commenters who supported the concept of mandatory audiometric testing for miners varied greatly as to when such tests should be required. A number of commenters believed that audiometric testing should be mandatory for miners whose noise exposures equal or exceed the action level, and that all miners enrolled in a hearing conservation program should be required to submit to audiometric examinations. Other commenters supported mandatory audiometric testing for all miners, regardless of their noise exposures. One commenter who supported mandatory testing stated that the Americans with Disabilities Act (ADA) protects miners from discrimination based on hearing disability, and any confidentiality concerns would be addressed both by the ADA and the protections in the proposed rule.

MSHA has concluded that mandatory audiometric testing is inappropriate at all levels of noise exposure, based on several considerations. MSHA acknowledges the concerns of the commenters who believe that a voluntary audiometric testing program could allow miner hearing loss to go undetected and unaddressed. However, MSHA is reluctant to require miners, either directly or indirectly, to submit to medical examinations that they do not wish to undergo. MSHA is also reluctant to require miners to submit to testing when the miners may have concerns about the privacy and confidentiality of audiometric test records and follow-up evaluations. MSHA also believes that a miner who voluntarily participates in audiometric testing will more likely wear hearing protectors, maintain engineering noise controls, and comply with administrative noise controls. Mine operators remain free to make audiometric testing mandatory for their miners. However, a miner's refusal to participate in a mandatory audiometric testing program would be a labor-management issue rather than an MSHA enforcement issue, and is outside the scope of this rule.

Under § 62.120 of the final rule, mine operators must enroll miners whose exposure to noise exceeds the action level in a hearing conservation program, and offer those miners the opportunity for regular audiometric tests. Information from these tests indicating that miners are experiencing hearing loss should prompt both the mine operator and the Agency to examine the effectiveness of existing noise controls. For example, if a miner incurs a standard threshold shift, the mine operator, at the very minimum, should ensure that a hearing protector is provided to and worn by the miner (see preamble for § 62.160(c)(1) for further discussion). If the miner already has a hearing protector, the mine operator should determine whether the hearing protector needs to be changed. The information obtained through audiometric testing may indicate the need to pinpoint the source of the noise causing the problem, and may reveal an undetected failure of existing noise controls, failure to properly fit, maintain or utilize hearing protectors, or failure of the training to provide adequate instruction.

Paragraph (a) of § 62.170 of the final rule, like the proposal, requires that a miner be offered the opportunity for audiometric testing to establish a baseline audiogram, against which subsequent annual audiograms can be compared. An existing audiogram may be used as the baseline audiogram if it meets the audiometric testing requirements of § 62.171 of the final rule. OSHA also accepts existing audiograms as a baseline because, in most cases, use of an existing baseline audiogram is more protective for the employee. Establishing a miner's baseline after the miner has been exposed to high levels of noise for many years is likely to result in less protection for the miner, because the new audiogram would typically show higher thresholds. Consequently, the true extent of future hearing losses would appear smaller than if they had been compared to a baseline that had been established prior to the years of noise exposure.

A few commenters believed that the audiogram should be conducted within 12 months of the effective date of the rule to be considered a baseline. Other commenters believed an existing baseline should be used; otherwise, experienced miners would be placed at a disadvantage if their baselines were established after the implementation of the final rule.

MSHA encourages the use of existing audiograms as baselines because, as explained above, this approach would provide a greater degree of protection for the affected miner. Therefore, the final rule adopts the proposed provision that permits the use of existing audiograms as the baseline at the discretion of the mine operator, if the audiograms meet the testing requirements of this part. MSHA acknowledges the concerns of commenters about miners who may already have incurred a hearing loss before the effective date of the final rule, whose hearing loss may not be accurately assessed if new baseline audiograms are used under this rule. However, the establishment of a comprehensive scheme that addresses existing hearing loss among miners is outside the scope of the final rule, whose purpose is the prevention of occupational noise-induced hearing loss among miners and the reduction of the progression of such hearing loss.

Paragraph (a)(1) adopts the proposed requirement that the audiometric testing which results in a baseline audiogram be offered to the miner within 6 months of enrollment of the miner in a hearing conservation program, or, if mobile test vans are used, within 12 months of the miner's enrollment. These requirements are consistent with the requirements of OSHA's noise standard. MSHA's existing noise standards for coal mines do not specify a deadline for baseline audiograms for those miners under a hearing conservation plan, and the existing noise standards for metal and nonmetal mines do not require baseline audiograms.

Commenters offered differing views on the appropriate period within which a baseline audiogram should be conducted. One commenter believed that a miner's audiometric baseline should be determined within 90 days of the miner's enrollment in the hearing conservation program, rather than 6 months or a year. Others were of the opinion that 6 months for a baseline (12 months if a mobile test van is used) established in the proposal was a

reasonable deadline. In contrast, the National Institute for Occupational Safety and Health (NIOSH) has recommended that baseline audiograms be conducted within 30 days of enrollment in a hearing conservation program, even if a mobile test van is used. NIOSH believes that waiting up to 6 months for a baseline audiogram is unacceptable, because exposure to high sound levels for a relatively short period of time can adversely affect the hearing sensitivity of susceptible individuals. Other commenters advocated the use of pre-employment audiometric testing, under the rationale that such examinations should be part of the battery of tests conducted when a miner is hired. These commenters believed that there is a need to document a miner's existing hearing loss at the point that the miner is hired, so that mine operators can establish what part of a miner's hearing loss can be attributed to noise exposure at that mine. Another commenter requested that the first annual or periodic audiogram conducted after the effective date of the noise rule should be considered the baseline audiogram.

Baseline audiograms provide an essential point of comparison for subsequent audiograms, and are critical in determining the extent of a miner's hearing loss. If the baseline audiometric test is not conducted properly and at the appropriate time, it may not accurately reflect the miner's hearing thresholds, and any changes between the baseline audiograms and subsequent audiograms may be masked. Because of the importance of the baseline audiogram, it is highly desirable to conduct the baseline testing before a miner is exposed to hazardous noise.

MSHA has determined that a deadline of 6 months (or 12 months if a mobile test van is used) for obtaining the baseline audiogram is reasonable. This is because in many cases it is not possible to conduct it any sooner due to the remote location and intermittent operation of many mines and to the unavailability of adequate audiometric testing facilities. MSHA recommends that testing should take place as soon as possible.

The 12-month period for testing by a mobile van allows mine operators to schedule baseline and annual audiograms simultaneously, and thus substantially reduce the cost when mobile test vans are used. The 12-month deadline for mobile van testing recognizes that there may be significant logistical and scheduling considerations in a visit to a mine by a mobile test van. Scheduling may need to be done months in advance.

It should be noted that § 62.160(c)(2) of the final rule requires mine operators not only to provide all miners enrolled in a hearing conservation program with hearing protectors, but also to ensure the hearing protectors are used if the baseline audiogram cannot be conducted within the 6-month deadline. The final rule's requirements for baseline audiograms, including the use of hearing protectors, are consistent with the OSHA rule.

14-hour Quiet Period

Paragraph (a)(2) of § 62.170 of the final rule has been adopted with a substantive change from proposed §§ 62.140(b)(2) and (b)(3). This paragraph, like the proposal, requires that the mine operator notify the miner of the need to avoid high levels of noise for at least 14 hours immediately preceding the baseline audiogram. This paragraph also requires that the mine operator not expose the affected miner to workplace noise for at least a 14-hour period immediately prior to receiving the baseline audiogram. The final rule, unlike the proposal, allows the use of hearing protectors as a substitute for this quiet period. Although existing MSHA standards for noise do not include provisions for a quiet period before a baseline audiogram, these requirements are similar to a provision in OSHA's noise standard.

The 14-hour quiet period provides a miner's hearing sufficient rest to allow recovery from any temporary elevation of hearing levels due to noise exposure (temporary threshold shift) caused by pre-test noise exposure. Hearing levels return to normal after a period of quiet. If the baseline audiogram is skewed by a temporary threshold shift, comparisons of the baseline to subsequent annual audiograms will not provide an accurate indication of the extent of damage incurred during the time between the baseline and subsequent tests. It is critical that a miner's baseline audiogram reflect no temporary threshold shift. Otherwise, it will be essentially impossible to determine the magnitude or progression of future hearing loss.

Some commenters supported extending the quiet period requirement to annual audiograms as well as baseline audiograms. Other commenters opposed a mandatory 14-hour quiet period, maintaining that requiring miners to be protected from workplace noise prior to the baseline test was unreasonable for mines with extended shifts. In those mines, unless the miner missed all or part of the work shift, he or she would not receive 14 hours of quiet time. This would severely disrupt the operation of those mines. Another commenter questioned how a mine operator could possibly ensure that a miner was not exposed to high levels of non-occupational noise.

MSHA agrees that the mine operator has no control over a miner's exposure to noise away from work. However, the training required under the final rule should encourage miners to avoid high noise exposures off the job before audiometric testing. One commenter also suggested that the 14-hour quiet period be reduced to 12 hours, because it would minimize any interference with normal work shifts.

Research has been conducted on the length of the hearing recovery period from a temporary threshold shift due to exposure to noise. Fodor and Oleinick (1986), in their study on workers' compensation programs in the United States, reported that the initial recovery from a temporary threshold shift appeared to be very rapid at the end of the noise exposure, but that the rate of recovery appeared to slow as time went on. Most researchers, however, report complete recovery from a temporary threshold shift taking no longer than 16 hours, provided that the temporary threshold shift did not exceed 40 dB. On the other hand, some states require that a worker be away from noise exposure for 6 months before hearing loss is evaluated for workers' compensation purposes. Standards of the U.S. Navy require a quiet period of at least 14 hours, and the U.S. Air Force requires a 15-hour quiet period before audiometric testing.

After consideration of all of the comments and a review of the available scientific literature on the subject, MSHA has concluded that a quiet period is necessary to obtain a valid baseline audiogram, and that a 14-hour quiet period is the most appropriate of several alternatives. This conclusion is consistent with the requirements in OSHA's noise standard and should provide sufficient time to avoid or recover from a temporary threshold shift before the baseline audiogram is conducted.

A quiet period of longer than 14 hours would place an undue burden on mine operators, because in many instances the miner would have to stay away from the work site to comply with the quiet period when the miner works a slightly extended shift; many work shifts exceed 8 hours, especially when a lunch period is taken into account.

The proposal, like the final rule, prohibits the exposure of miners to ''workplace noise'' during the 14-hour quiet period. Several commenters requested a definition for ''workplace

noise,'' suggesting that the final rule provide that miners would be considered to be protected from ''workplace noise'' if they are not exposed to noise above the action level or above the permissible exposure level.

Two researchers, Shaw (1985) and Suter (1983), contend that sound levels must be below 72 dBA to be considered ''effective quiet.'' Schwetz et al. (1980) found that a sound level below 85 dBA is needed for recovery from a temporary threshold shift. Studies have shown that individuals with a temporary threshold shift recovered their normal hearing more quickly when exposed to a 75-dBA sound level than they did when they were exposed to an 85-dBA sound level. The 1972 NIOSH Criteria Document recommends a sound pressure level of 65 dB as ''effective quiet,'' based on work by Schmidek et al. (1972). Hodge and Price (1978) concluded that a sound level must fall below 60 dBA to provide effective quiet and not contribute to the development of a temporary threshold shift.

Recovery from a temporary threshold shift requires exposures below 80 dBA, and based on scientific studies, extended exposure to noise above 80 dBA may lead to a material hearing impairment. MSHA has therefore concluded that an acceptable definition of ''workplace noise'' is a sound level that exceeds 80 dBA, without taking into account the noise reduction provided by a hearing protector.

Because the mine operator has no control over the non-occupational noise exposure of a miner, the final rule does not limit non-occupational noise to a specified sound level during the quiet period; however, as noted below, the final rule does require that the mine operator notify miners of the need to avoid high levels of noise during the 14-hour period preceding the test. It is to the miner's benefit to limit non-occupational exposure to noise in order to obtain accurate audiometric testing.

As mentioned above, the final rule, unlike the proposal, adopts the suggestion of a number of commenters to permit the use of hearing protectors as a substitute for the quiet period. The specific prohibition against hearing protectors as a substitute for a quiet period in § 62.140(b)(2) of the proposal elicited a number of comments. Many commenters believed that the use of hearing protectors should be allowed because they would provide adequate protection for miners. Many also believed that a mandatory 14-hour quiet period would be impractical without the use of hearing protectors. Several commenters advocated that hearing protectors be permitted to be used to satisfy the 14-hour quiet period providing the following conditions were met: required retraining of the miner on the use of hearing protectors within 5 days prior to the baseline audiogram; a requirement that an earmuff-type hearing protector or a foam earplug be used, and that the protector be in satisfactory condition; and mandatory use of dual hearing protectors if the noise exposure exceeds 100 dBA. Many of the commenters who opposed the use of hearing protectors as a quiet period substitute were those who opposed the use of hearing protectors for any reason (see the preamble discussion of engineering and administrative controls under § 62.130). As discussed elsewhere, although hearing protectors are not as effective as engineering and administrative controls in protecting miners, MSHA has concluded that they have an appropriate place in a hearing conservation scheme.

OSHA's noise standard allows the use of hearing protectors as an alternative to the 14-hour quiet period prior to the baseline audiogram, under the rationale that they may provide sufficient noise reduction to prevent a noise-induced temporary threshold shift from contaminating a baseline audiogram, and that the previous restriction on hearing protectors as a quiet period substitute was unnecessarily restrictive.

MSHA's final rule is consistent with OSHA's noise standard in that it allows hearing protectors to be substituted for the 14-hour quiet period prior to the baseline audiogram. Although MSHA recognizes that this decision may result in some miners having measured thresholds that are higher than their actual thresholds, as a result of exposure to some high sound levels, the magnitude of the elevated thresholds should be small unless the noise exposure is severe.

Data indicate that in order to prevent contamination of the baseline, the sound levels encountered during the quiet period would need to be below 80 dBA. MSHA is particularly concerned with the ability of hearing protectors to reduce noise to such low levels. Some researchers have concluded that even an 80 dBA level may be inadequate to protect the most susceptible individuals. However, MSHA has concluded that prohibiting the use of hearing protectors to fulfill the 14-hour quiet period is too impractical a restriction for most mine operators. Such a restriction may be too disruptive of the operations at many mines. Hearing protectors that are correctly fitted and used should provide an acceptable quiet period. The final rule, like OSHA's noise standard, therefore allows the use of hearing protectors as a substitute for the 14-hour quiet period.

MSHA nonetheless strongly recommends that mine operators make reasonable attempts to provide a quiet period for miners before their baseline audiogram, instead of relying on hearing protectors. For example, a mine operator could provide a miner with a quiet period by scheduling the baseline audiogram after a miner's regularly scheduled day off or immediately following a weekend during which the miner does not work. This avoids any disruption of operations, while at the same time ensuring that the audiogram is not contaminated.

Sound Level Avoidance

Paragraph (a)(2) of § 62.170 of the final rule, like § 62.140(b)(3) of the proposal, requires mine operators to notify the miner of the need to avoid high levels of noise during the 14-hour period immediately preceding the baseline audiogram. This requirement is identical to provisions in OSHA's noise standard.

Only a few commenters addressed this issue. Some commenters agreed that workers need to be advised to avoid non-occupational noise exposure prior to taking the baseline audiogram. Several commenters were concerned that notifying the miners to avoid high levels of noise could lead to fraud in workers' compensation cases. These commenters were concerned that miners might intentionally expose themselves to high levels of noise prior to the baseline audiogram in order to provoke a temporary threshold shift and eventually receive an award of compensation. MSHA expects that competent audiologists and physicians will be able to determine if a miner has purposely incurred a temporary threshold shift.

The 1983 preamble to revisions to OSHA's noise standard (48 FR 9757) reflects OSHA's conclusion that the likelihood of non-occupational noise exposure contaminating the baseline audiogram can be substantially reduced by counseling workers of the need to avoid such exposures in the period before their baseline tests. MSHA agrees with OSHA's conclusion regarding worker notification, and the final rule reflects this determination. It should be noted that the final rule does not require written notification. However, it may be in a mine operator's interest to put the notification in writing, because it provides the mine operator with proof of notification.

Exceptions for Revising Baseline Audiograms or Revised Baseline Audiograms

The requirements of paragraph (a)(3) of § 62.170 of the final rule are nearly identical to proposed § 62.140(b)(4) in that a mine operator must not establish a new baseline audiogram or revised baseline audiogram, where one has been established, due to changes in the miner's enrollment status in the hearing conservation program. However, baseline audiograms may be revised if a miner is away from the mine for a period of time exceeding 6 consecutive months. OSHA's noise standard does not contain such a requirement. This restriction is intended to ensure that a new baseline audiogram is not established or a miner's baseline audiogram is not revised even if a miner moves in and out of enrollment in a hearing conservation program because of time away from the mine due to unemployment or extended periods of vacation. Otherwise, a miner's incremental losses of hearing may be erased by revised baseline audiograms, and the true extent of a miner's hearing loss may escape accurate measurement.

Some commenters believed a new baseline should be established if the affected miner is away from the mine for at least 6 or 12 months. Another commenter stated the mine operator should be allowed to obtain a new baseline for a miner who returns to work after working for another mine operator, regardless of how long the miner had been away. These commenters were concerned about being held responsible for a miner's hearing loss that results from overexposure to noise during other employment. A large number of contract and transient employees work in the mining industry. Additionally, many metal and nonmetal mines operate seasonally or otherwise intermittently throughout the year. As a result, a large number of miners are typically away from the job site for long periods of time. MSHA agrees that mine operators should not be held responsible for a miner's hearing loss incurred during employment at other mines or during extended periods of unemployment. Therefore, the final rule adopts the proposed provision that allows for the revision of the baseline audiograms or revised baseline audiograms, where one has been established, for those miners who have been away from their employment at a particular mine for periods longer than 6 consecutive months.

Annual Audiogram

Paragraph (b) of § 62.170 of the final rule adopts the requirement of § 62.140(c) of the proposal that, after the baseline audiogram has been established, the mine operator must continue to offer the miner subsequent audiometric tests every 12 months as long as the miner remains enrolled in a hearing conservation program.

Existing MSHA standards for metal and nonmetal mines do not require audiometric testing. Under existing standards for coal mines, pre-employment and periodic audiograms are offered to miners at mines operating under a hearing conservation plan, but no procedures or time frames for these audiograms are specified (although MSHA policy provides that periodic audiograms must be offered at least every two years). Because MSHA policy has allowed consideration of the noise reduction value of hearing protectors to be considered when determining compliance with the permissible exposure level in coal mining, few coal mines have hearing conservation plans, and only one percent of coal miners are currently covered by such plans.

Some commenters supported annual audiometric testing, while several others supported periodic audiometric testing but recommended different intervals, ranging from once a year to once every three years depending upon the severity of the noise exposure or of the existing hearing loss. However, none of these commenters offered suggestions for the relationship between the severity of a miner's noise exposure and the frequency of audiometric testing. One commenter requested clarification as to whether the annual audiometric tests would be required to be administered once each year or once each 12 months. Several commenters questioned how a mine operator could be protected from liability for non-occupational hearing loss that occurs between the annual audiometric tests. Once baseline audiograms have been obtained, OSHA requires that an audiogram be offered annually to each employee exposed at or above the action level in order to identify changes in hearing sensitivity. This allows the use of hearing protectors to be prescribed or other follow-up measures initiated before the miner's hearing loss can worsen. OSHA adopted the annual audiometric test requirement because of the potential seriousness of the hearing damage that can occur within a 2-year period, before the hearing loss is identified by an audiogram.

MSHA has concluded that annual audiometric testing is necessary for evaluating the hearing level of miners whose exposure equals or exceeds the action level for extended periods of time. These annual audiograms can be used to detect changes in a miner's hearing sensitivity, thus triggering several important actions provided for in the final rule. For example, retraining of the miner could be required. If a miner is enrolled in the hearing conservation program as a result of noise exposure at or above the action level, but the miner's noise exposure is below the permissible exposure level, detection of a standard threshold shift will require the mine operator to provide the miner with a hearing protector and ensure its use. If a miner is already using a hearing protector, the miner must be allowed to select a different hearing protector. Detection of a standard threshold shift also requires reevaluation of the engineering and administrative controls being used at the mine.

With regard to those commenters who were concerned about being held responsible for non-occupational hearing loss that occurs between annual audiograms, MSHA has concluded that the physicians or audiologists who conduct the audiometric tests are in a position to determine whether any hearing loss detected by the test is due to non-occupational causes.

The intervals between annual audiometric testing conducted under the final rule must not exceed 12 months. This means that testing once every calendar year would not be acceptable unless the interval between the tests is 12 months or less. For example, an annual audiogram in January of one calendar year cannot be followed by testing any later than January of the following calendar year. Otherwise, the interval between annual audiograms could extend to nearly 24 months, an unacceptably long time period, for the reasons explained above.

After a review of comments, the relevant scientific literature, and regulations of other governmental agencies, MSHA has concluded, and the final rule reflects, that annual audiometric testing is both necessary and appropriate, and is an integral part of a comprehensive hearing conservation program.

Revised Baseline Audiogram

Paragraphs (c)(1) and (c)(2) of § 62.170 of the final rule, which have been adopted from proposed §§ 62.140(d)(1) and (d)(2), require that the mine operator establish a revised baseline audiogram when:

(1) the standard threshold shift revealed by the annual audiogram is persistent; or

(2) the hearing threshold shown in the annual audiogram indicates significant improvement over the baseline audiogram.

These requirements are the same as those in OSHA's noise standard, and, in response to commenters, MSHA has adopted the term used by OSHA of ''revised baseline audiogram'' rather than ''supplemental baseline audiogram'' used in the proposed rule.

Many commenters favored revising the baseline if a standard threshold shift is persistent. Several commenters suggested that MSHA adopt the guidelines of the National Hearing Conservation Association for revising baseline audiograms, to establish some consistency in determinations.

MSHA has concluded that allowing revision of the baseline after a standard threshold shift has been identified will prevent the same standard threshold shift from being identified repeatedly. The annual audiogram on which the standard threshold shift is identified then becomes the revised baseline audiogram. In addition, MSHA intends that each ear be treated separately when the baseline audiogram is revised. If the baseline is revised for both ears when only one has a standard threshold shift, detection of a standard threshold shift in the other ear may not be possible, even if the miner has lost a substantial amount of hearing sensitivity.

Under the final rule, the revised baseline audiogram should be compared with future annual audiograms to identify a second standard threshold shift. The original baseline audiogram continues to be used to quantify the total hearing loss, and is considered in determining whether the hearing loss constitutes a ''reportable hearing loss.''

Some commenters favored revising the baseline if the annual audiogram showed an improvement in hearing. One commenter recommended that a revised baseline be permitted only if the improvement in the miner's hearing was consistent for multiple consecutive tests. Another commenter stated that MSHA should not adopt the provision for revised audiograms in the final rule, because hearing sensitivity does not improve with noise exposure or increasing age. While it is true that hearing sensitivity does not improve; MSHA recognizes that audiometric tests can sometimes reflect an apparent improvement. Under the final rule, MSHA leaves it to the professional judgement of the medical professional or audiologist to conduct multiple tests to confirm that the apparent improvement is real.

Paragraph (c)(2) requires revision of the baseline if the annual audiogram shows significant improvement in hearing level. This provision has been adopted unchanged from the proposal, and provides additional protection to the miner because it allows more accurate evaluation of the true extent of hearing loss that may occur in the future. When a baseline audiogram is revised due to an improvement in hearing sensitivity, the revised baseline must be considered the original baseline for determining when a standard threshold shift occurs and for quantifying the total reportable hearing loss under part 50. The latter is reflected in § 62.101 of the final rule, under the definition of a ''reportable hearing loss.''

Finally, one commenter suggested that separate baselines be kept for a standard threshold shift and otologic referrals. This measure is not needed, however, because the final rule requires that all audiograms be retained as part of the audiometric test record under § 62.171(b)(2). Revision of the baseline audiogram does not permit the destruction of the original baseline audiogram.

Temporary and Seasonal Miners

In the preamble to proposed § 62.120, MSHA solicited comments on how to best protect temporary or seasonal miners whose occupational noise exposures equal or exceed the action level. MSHA raised this issue because mines producing certain commodities, such as sand, gravel, and crushed stone frequently cease operations during the winter months. As a result, miners at these operations may only work part of the year, and protecting the hearing of these miners can be extremely problematic, given the long periods when miners are away from the mine site.

Some commenters believed that the fact that the proposal would allow mine operators 6 months to arrange for miners to receive baseline audiograms would effectively exclude most temporary or seasonal miners, because their employment relationship with the mine operator would end before the deadline for their audiometric testing had passed. Other commenters suggested that the use of hearing protectors on the job would adequately protect temporary miners from experiencing an occupational noise-induced hearing loss. One commenter suggested that it would be too burdensome for a mine operator to enroll miners who had worked less than one year in the audiometric testing program. Several commenters opposed any exemption that would result in temporary miners receiving less protection than that provided to other miners.

OSHA has no exemption for audiometric testing for temporary or seasonal workers, and, like the proposal, MSHA's final rule does not provide any exemption for temporary or seasonal miners from the final rule's audiometric testing requirements. MSHA has determined that such an exemption would mean that miners who work intermittently in the mining industry may never receive an audiometric test to detect hearing loss, even if they work under very noisy conditions, and would never receive any of the protections required under the final rule for miners who have incurred hearing loss.

Although the 6-month time period (12 months where a mobile van is used) allowed under the final rule for obtaining an audiogram could effectively exclude many temporary or seasonal miners from the audiometric testing program, prudent mine operators will offer audiometric tests to temporary or seasonal miners and not take advantage of the 6-month period to avoid offering these miners audiometric tests.

Section 62.171 Audiometric Test Procedures

This section of the final rule establishes the procedural and recordkeeping requirements for the audiometric testing conducted under this part. This section specifies the frequencies to be used in the testing, and requires the mine operator to compile and maintain an audiometric test record for each miner tested. The requirements of this section are essentially the same as those proposed in § 62.150, with several relatively minor changes.

Paragraph (a) of this section of the final rule adopts the proposed requirement that audiometric testing under part 62 be conducted in accordance with scientifically validated procedures. MSHA's metal and nonmetal noise standards do not contain audiometric testing provisions. While MSHA's noise standards applicable to coal mines require audiometric testing, they do not include any procedural requirements for this testing. The final rule does not specify detailed procedures for audiometric testing, calibration of audiometers, or qualifying of audiometric test rooms. Instead, the final rule takes a performance-oriented approach, not only to allow flexibility in compliance but also to accommodate technology developed in the future. The final rule

specifies basic parameters for the testing while allowing the physician or the audiologist to use professional judgment in selecting the appropriate testing procedures.

This aspect of the proposal generated a significant amount of comment. Several commenters stated that the proposed requirement that tests be conducted in accordance with ''scientifically validated procedures'' was too vague, and recommended that the final rule clarify or define the phrase ''scientifically validated procedures.'' Some commenters believed that if the Agency failed to specify the test procedures that should be followed, audiometric test results would not be uniform. Other commenters, some of whom strongly supported a performance-oriented approach to testing procedures, suggested that the final rule include an appendix specifying the level of testing performance expected, or at least providing examples of acceptable procedures that may be followed. Commenters stated that this would allow mine operators to determine if the procedures they have adopted comply with the requirements of the final rule.

Several commenters recommended specific changes regarding audiometric testing, including audiometric test instruments, calibration procedures, and audiometric test rooms. Several commenters believed that the audiometric testing procedures required by the final rule should be identical to OSHA's requirements, which contain detailed testing procedures in 29 CFR § 1910.95(h) and in associated appendices. Others recommended that the final rule require audiometric testing to be conducted in accordance with several standards of the American National Standards Institute (ANSI), including ANSI S3.21–1978, ''Methods for Manual Pure-Tone Threshold Audiometry,'' which provides detailed procedures for conducting audiometric tests; ANSI S3.1–1991, ''Maximum Permissible Ambient Noise Levels for Audiometric Test Rooms,'' which provides a criterion for the maximum background sound pressure levels to obtain a valid audiogram; and ANSI S3.6–1996, ''Specification for Audiometers,'' which provides design criteria for various classes of audiometers.

Some commenters suggested that MSHA specify calibration procedures for audiometers. The suggestions included requiring daily calibration of audiometers as well as annual laboratory calibration. Other commenters recommended that MSHA specify the maximum background sound pressure levels acceptable during audiometric testing.

Several commenters suggested, in the absence of a definition for ''scientifically validated procedures,'' that the final rule provide that if the qualified professional who conducts the audiometric tests certifies the test's scientific validity, the mine operator is permitted to rely in good faith on such certification.

After reviewing the comments, the scientific literature, and several governmental standards, MSHA has concluded that the final rule should adopt the proposed performance-oriented approach, and should not include detailed, highly technical procedures and criteria for conducting audiometric testing in the final rule. Instead, the final rule adopts the proposed requirement that audiometric testing procedures be governed by scientifically validated procedures, which would be any method or procedure that has been proven to be effective and is generally recognized by experts in the technical field. Such procedures may be incorporated, for example, into consensus standards, governmental specifications, or military regulations, including OSHA's audiometric testing procedures and criteria or the procedures included in the three ANSI standards referenced above.

MSHA anticipates that most audiograms conducted under the final rule will employ the procedures specified in OSHA's noise standard, in large part because many physicians and audiologists are already familiar with those procedures, and many computer programs used for or in conjunction with audiometric testing are based on that standard. Further, many audiology texts and training courses of the Council for Accreditation in Occupational Hearing Conservation (CAOHC) reference OSHA's audiometric testing procedures and criteria in detail. OSHA's audiometric testing requirements and associated appendices can be found in 29 CFR § 1910.95. To assist the mining community in complying with the audiometric requirements in the final rule, MSHA will post OSHA's requirements on our Internet Home Page at www.msha.gov.

Another possible source of acceptable procedures under the final rule are the recommendations provided by audiometer manufacturers on audiometer use and calibration (in both the laboratory and the field). These equipment manufacturers are in a position to issue specific recommendations on the use and calibration of their audiometers. By following manufacturer's recommendations, accurate audiometric testing will be ensured.

Under the final rule the individual who conducts the testing must have the specialized qualifications of a physician, audiologist, or technician, all of whom should be knowledgeable and familiar with scientifically validated procedures and capable of exercising professional judgment in choosing the appropriate testing procedures. Further, the final rule allows the use of any scientifically validated procedure, which provides flexibility for the use of new procedures or technology that may be developed in the future. This means that if a new, possibly more accurate, procedure is developed and has been scientifically validated, the physicians and audiologists who perform audiometric testing under this part may readily adopt its use.

Test Parameters

Paragraph (a) of § 62.171 of the final rule, like the proposal, requires that audiometric tests be pure tone, air conduction, hearing threshold examinations, with test frequencies at 500, 1000, 2000, 3000, 4000, and 6000 Hz. The final rule also requires that each ear is to be tested separately. This aspect of the final rule is consistent both with OSHA's requirements for audiometric testing frequencies and with NIOSH's recommendations in its 1972 Criteria Document. Existing MSHA regulations do not include any specifications for audiometric testing.

A few commenters directly addressed the audiometric test parameters in the proposal. Of these, one commenter specifically supported the test frequencies as proposed. A few other commenters supported the adoption of the test frequencies either in the OSHA noise standard or in ANSI S3.21–1978, ''Methods for Manual Pure-Tone Threshold Audiometry,'' and ANSI S3.6–1996, ''Specification for Audiometers,'' or a combination of these standards. As stated above, the test frequencies required by the final rule are identical to those required in OSHA's noise standard. The ANSI standards include the additional test frequencies of 250 and 8000 Hz. Other commenters supported adding 8000 Hz to the test frequencies included in the proposal. These commenters believed that adding the frequency of 8000 Hz would assist the evaluator of the audiogram in determining the cause of the hearing loss more accurately. Commenters pointed out that because this frequency is standard on audiometers manufactured since 1974, inclusion of this frequency would not

present a significant burden on the individual conducting the test.

As noted elsewhere in this preamble, noise-induced hearing loss is a permanent sensorineural condition that cannot be improved medically, and is characterized by a declining sensitivity to high frequency sounds. This loss usually appears first and is most severe at the 4000 Hz frequency, and the ''4000 Hz notch'' in the audiogram is typical of noise-induced hearing loss. Continued exposure causes the loss to include other audiometric test frequencies, with 500 Hz being the least affected. While 500, 1000, and 6000 Hz are not included in the definition of a standard threshold shift, MSHA, like OSHA, believes that these test frequencies contribute to a more thorough audiometric profile and are helpful in assessing the validity of the audiogram as a whole. Testing at 500 and 1000 Hz makes it easier for an audiologist or physician to differentiate conductive hearing loss from noise-induced hearing loss, and testing at 6000 Hz allows better differentiation between age-induced and noise-induced hearing loss, so testing at 8000 Hz is unnecessary. However, this would not prevent testing at additional frequencies.

Audiometric Testing Records

The requirements of paragraphs (b)(1) through (b)(5) of § 62.171 of the final rule specify which audiometric testing records a mine operator must maintain. They have been adopted from proposed § 62.150(c) with one change. Under the final rule mine operators are required to compile an audiometric test record for each miner tested, including the miner's name and job classification, copies of all of the miner's audiograms required under part 62, evidence that the audiometric tests were conducted in accordance with paragraph (a) of this section, any exposure determinations for the miner, and the results of any follow-up examinations. The proposal would have required the mine operator to obtain a certification from the physician or audiologist that the audiometric testing had been conducted in accordance with scientifically validated procedures. In lieu of this requirement, the final rule provides greater flexibility by requiring evidence that the audiograms were conducted in accordance with the final rule's requirements. MSHA's existing standards currently contain no recordkeeping or record maintenance requirements.

Many commenters raised issues concerning the proposed requirements for audiometric testing records. Several commenters proposed that MSHA adopt the requirements of OSHA's noise standard, which requires not only the name and job classification of the employee, but also the date of the last acoustic or exhaustive calibration of the audiometer. OSHA also requires employers or audiometric test service providers to maintain an accurate record of background sound pressure levels in audiometric test rooms. However, as discussed above, OSHA's noise standard includes specific procedures for audiometric testing, and the additional records required under OSHA's standard are intended to show that the required procedures have been followed. Without such specific procedures, these additional records are unnecessary. OSHA's noise standard, like the final rule, requires that employers maintain a record of audiometric test results.

One commenter requested clarification of the recordkeeping requirement, asking if it was limited to individual readings for specific miners or also included records of area or group monitoring. The requirement covers only personal noise exposure determinations, because this information will allow persons evaluating audiometric testing results to make a better determination regarding the nature of a miner's hearing loss.

The recordkeeping requirements for audiometric testing in the final rule provide essential information to MSHA and to health professionals for the evaluation of a miner's audiogram. The information is also necessary for identifying the audiograms, for evaluating whether the audiometric tests have been conducted properly, and for determining whether the results are valid. Further, the information is critical to the evaluator in determining whether an identified hearing loss is occupationally induced or aggravated by occupational noise exposure.

Section 62.150(b) of the proposal would have required mine operators to obtain a certification from the physician or audiologist responsible for conducting audiometric tests under this part that such tests had been conducted in accordance with scientifically validated procedures. In its place paragraph (b)(3) of this section of the final rule requires that the audiometric test record include evidence that the audiometric tests conducted under part 62 have been conducted in accordance with the scientifically validated procedures required under paragraph (a) of this section.

One commenter was of the opinion that mine operators should be allowed to rely on the professionals certifying the audiometric test results, and should not be held responsible for improper procedures if they have received a certification from the professional conducting the test. Another commenter believed that, since the proposal would already require that the person conducting the test have minimum qualifications, such a certification would be unnecessary.

Some commenters, who believed that requiring mine operators to obtain a certification for each individual audiogram was unduly burdensome, stated that the final rule should allow mine operators to obtain a certification for a group of audiograms.

The Agency agrees with commenters that the certification requirement set forth in the proposal would be unnecessarily rigid. However, MSHA has also concluded that some type of evidence is necessary to indicate that the audiometric tests conducted under this part are in accordance with scientifically validated procedures. Therefore, the final rule provides that audiometric test records required to be maintained must include evidence that the audiograms were conducted in accordance with paragraph (a) of this section of the final rule, which provides that scientifically validated procedures must be followed. Such evidence could include a letter from a physician, audiologist, or qualified technician that states which audiometric test procedures have been followed. A billing record that indicates the test procedures used would also be acceptable. Finally, the audiogram itself may include information about the test procedures used sufficient to satisfy this requirement. Other types of evidence not listed here may also be acceptable under the final rule, provided they reflect compliance with the procedural requirements of the final rule. Evidence that a group of audiograms were conducted in accordance with required procedures would also be sufficient, provided that it makes clear which audiograms are involved. This responds to commenters who believed the proposed requirements, which could have been read to require an individual certification for each audiogram, were unnecessarily burdensome.

MSHA agrees that the mine operator would ordinarily not have sufficient medical knowledge to determine if the tests were properly conducted, and would ordinarily rely on the physician, audiologist, or qualified technician to provide the evidence required under this paragraph. The final rule does hold the mine operator responsible for obtaining this evidence from these professionals—MSHA assumes that mine operators, as a result of their

business or contractual relationships with providers of audiometric tests, can easily specify that such evidence must be provided as part of the terms and conditions of the service agreement.

Paragraph (c) of § 62.171 of the final rule, which has been adopted with two changes from proposed § 62.150(d), specifies the location and duration for maintenance of the testing records compiled under paragraph (b). In response to commenters, the final rule does not adopt the proposed requirement that the records be maintained at the mine site. The final rule also clarifies that these records must made be available for inspection by an authorized representative of the Secretary of Labor. MSHA's existing standards contain no requirements in this area. OSHA standards require that audiometric testing records, along with all other employee medical records required to be kept under OSHA standards, be maintained for at least the duration of the worker's employment plus 30 years, with the exception of employees who have worked for less than one year for the employer. Additionally, the OSHA rule provides that employee medical records need not be retained beyond the term of employment if they are provided to the employee upon termination.

MSHA received a number of comments specifically addressing time frames for maintaining audiometric test records. Commenters recommended several different periods of record retention beyond the duration of the miner's employment—6 months, 12 months, or 30 years, which is the retention period required by OSHA. Requirements for maintenance and retention of audiometric tests records of the U. S. armed forces, including the Navy, the Air Force, and the Army, and several foreign countries require the retention of audiometric test records for at least the duration of the test subject's employment, and in most cases for some period of time after the termination of employment.

MSHA's rationale in requiring retention of audiometric test records for at least 6 months beyond the duration of the miner's employment is that the miner's risk of occupational hearing loss stops with the cessation of employment.

Retention of audiometric records for an additional 6 months will ensure that the records remain available for use by the mine operator to conduct further evaluations should the miner return to employment within that period. This 6-month retention period does not place an unduly heavy paperwork burden on mine operators, but also addresses the seasonal operations in the metal and nonmetal mining industry, which cease operations during the winter months every year. MSHA expects that the periods of unemployment experienced by miners at those operations generally will not exceed 6 months, thus ensuring that these miners' audiometric records will be retained throughout their cycles of employment.

Under the final rule, ''duration of employment'' is the period of time between the date of a miner's initial hiring and the date on which the miner is released, quits, retires, or is otherwise separated. There must be a period of at least 6 months after formal termination of employment before a mine operator can destroy the audiometric test records. Moreover, under the final rule, a layoff, strike, lockout, furlough, period of leave (paid or unpaid), or other temporary break in service is not considered a formal termination of employment, even if it exceeds 6 months.

MSHA expects that many mine operators will retain miners' audiograms long after the miners' employment ceases, because the records could prove to be relevant if a miner should file a subsequent workers' compensation claim for hearing loss, especially because some states allow workers to file such a compensation claim many years after termination of employment.

Many commenters took issue with the proposed requirement that audiometric testing records be maintained at the mine site, and requested that MSHA permit the records to be stored at a site remote from the mine. These commenters believed maintaining these records at the mine would be burdensome, and that it may be much more efficient for many mine operators to store records at a central site, especially if several small mining operations were in the same general vicinity.

MSHA agrees with the points made by these commenters, particularly in light of the fact that electronic records are becoming more common in the mining industry, and may be stored on computer at a centralized location. The final rule therefore allows mine operators to keep audiometric test records at a location other than the mine site. However, the records must be stored within sufficient proximity to the mine to allow the mine operator to produce them to an MSHA inspector within a relatively short time. MSHA expects that in most cases this period will be no longer than one business day.

The final rule also clarifies that these records must be available for review by an authorized representative of the Secretary of Labor. MSHA inspectors already have the authority to review records required to be kept by the Mine Act or by the regulations established under it; this added language merely affirms this authority.

Section 62.172 Evaluation of Audiograms

This section of the final rule has been adopted unchanged from proposed § 62.160. It establishes the requirements for evaluating audiograms conducted under part 62. This section requires that the mine operator inform the person evaluating the audiogram of the requirements of this part and provide the evaluator with copies of the miner's audiometric test records. Additionally, the mine operator is responsible for having a physician, audiologist, or qualified technician determine if an audiogram is valid and if a standard threshold shift or reportable hearing loss has occurred.

This section also includes a provision to protect miners' non-occupational medical findings or diagnoses from disclosure to the mine operator and requires a prompt audiometric retest if a miner's audiogram is invalid. Finally, this section permits, but does not require, the adjustment of results of audiometric tests for age-induced hearing loss. Tables for this purpose are included in the final rule.

MSHA's existing noise standards do not address the evaluation of audiograms. The requirements in this section are similar to the requirements of OSHA's noise standard; the few differences are noted below.

A number of commenters noted that, although a doctor can distinguish hearing loss that has been caused by illness or injury from hearing loss caused by noise exposure, it is not possible to distinguish between hearing loss from work-related noise exposure and from non-work-related noise exposure. These commenters pointed out that many of their employees were very active during their non-working hours and had hobbies that could expose them to high sound levels, such as woodworking, hunting, motorcycling, snowmobiling, etc. These commenters took issue with the fact that, under the proposed rule, mine operators would be held responsible for all noise-induced hearing loss, regardless of whether it is occupationally related. MSHA agrees that hearing loss may result from many causes, not all of which are occupationally related. Under the final rule physicians and audiologists have the obligation to determine if the hearing loss was the result of or aggravated by occupational noise exposure or a medical condition aggravated by the use of hearing

protectors. If the hearing loss is not the result of or aggravated by occupational noise exposure or aggravated by the wearing of hearing protectors, mine operators would not be responsible for corrective action. In addition, the final rule allows correction of audiograms for hearing loss due to aging.

MSHA acknowledges that determining whether hearing loss is occupationally related is not always straightforward. However, physicians and audiologists conducting audiometric testing should routinely ask about a miner's employment history and both occupational and non-occupational noise exposures, in order to make reasoned assessments and conclusions about the source of any hearing loss that may be detected in the course of audiometric testing. If the miner's occupational noise exposures are minimal, and yet the miner has incurred a severe hearing loss, this should indicate to the physician or audiologist that he or she must look beyond the workplace for the cause of the hearing loss. The doctor can make an educated determination that a hearing loss is occupational based on certain patterns commonly seen in occupational loss. Some of these indicators are—

1. If the hearing loss is consistent in both ears;

2. If the loss is more severe in the higher speech frequencies;

3. If the patient has a history of exposures to noisy workplaces; and

4. If the patient has no evidence of illness or injury to the head or ears and there is no history of familial hearing loss or noisy pastimes (rock music, motorcycles, hunting). MSHA has concluded that taking this approach in such instances of uncertainty provides the best protection for miners.

Paragraph (a)(1) of § 62.172 of the final rule is adopted from proposed § 62.160(a)(1), and requires that the mine operator inform the person evaluating the audiogram of the requirements of part 62 and provide the evaluator with copies of the miner's audiometric test records.

The intent of this provision is to ensure that physicians and audiologists are sufficiently familiar with the final rule's requirements to evaluate miners' audiograms in compliance with the regulations. For example, the evaluator should be aware of how the final rule defines a standard threshold shift, the criteria in the final rule for audiometric retesting or medical follow-up, procedures for correction for age-induced hearing loss, and recordkeeping requirements. OSHA's noise standard requires employers to provide the evaluator of the audiograms with a copy of the requirements of its standard, copies of the employee's baseline and most recent audiometric test records, the background sound pressure levels in the audiometric test room, and a record of audiometer calibrations. Under MSHA's final rule, the person conducting the audiometric testing and evaluation of the audiogram is required to use scientifically validated procedures, and therefore has some discretion over which procedures are used. No comments were received addressing this aspect of the proposal, and it has been adopted unchanged in the final rule.

Under paragraphs (a)(2)(i) and (a)(2)(ii) of this section, which have been adopted from § 62.160(a)(2) of the proposal, the mine operator must have a physician or an audiologist, or a qualified technician under the direction or supervision of a physician or an audiologist, determine if an audiogram is valid and if a standard threshold shift or reportable hearing loss has occurred. This requirement is consistent with provisions in OSHA's noise standard.

Several commenters stated that only those physicians with experience and expertise in hearing and hearing loss should be permitted to review audiograms. MSHA has concluded that physicians should be included among those professionals who may evaluate audiograms, for reasons addressed in greater detail in the preamble discussion for § 62.170 of the final rule.

Other commenters stated that the final rule should define what constitutes an invalid audiogram, in light of the fact that physicians, audiologists, and qualified technicians, under the direction of a physician or audiologist, are required to determine whether the audiogram is invalid. One commenter recommended that the final rule adopt the Head and Neck Surgery referral criteria of the American Academy of Otolaryngology for determining whether an audiogram is invalid.

MSHA has not adopted the suggestion above and does not provide a definition for invalid audiogram, or a list in the final rule of the deficiencies that could render an audiogram invalid. Instead, the final rule requires that this assessment be made by qualified professionals—physicians, audiologists, and qualified technicians—and relies on their professional judgment and expertise in determining whether an audiogram is valid. These professionals are free to use whatever criteria they deem appropriate in making such a determination, including the American Academy of Otolaryngology referral criteria referenced above. In any case, it would not be possible to provide an exhaustive list of indicators of possible invalid audiograms. However, some factors that may indicate an invalid audiogram include, but are not limited to: large differences in hearing thresholds between the two ears; unusual frequency patterns that are not typical of noise-induced hearing loss; thresholds that are not repeatable; or an unusually large hearing loss incurred in less than a year.

One commenter advocated that the final rule require the supervising physician or audiologist to establish specific criteria for a technician to follow in determining whether the audiogram is valid or a standard threshold shift or a reportable hearing loss has occurred. This comment has not been adopted in the final rule, because the rule already requires that a qualified technician work under the supervision or direction of a physician or an audiologist. The physician or audiologist is ultimately responsible under the final rule for ensuring that the technician performs audiometric testing and evaluation with the requisite level of proficiency. MSHA has therefore concluded that it is unnecessary to include a specific requirement for making this determination.

Another commenter challenged the proposed requirement that the mine operator instruct the physician, audiologist, or qualified technician to determine if an audiogram is valid, maintaining that mine operators should rely on the medical professional's judgement instead.

MSHA agrees with commenters that mine operators typically would not have the expertise to determine the validity of an audiogram. However, the final rule places on mine operators the responsibility to ensure that miners are protected from occupational hearing loss. One part of an effective hearing conservation program is regular audiometric testing for miners at risk, and MSHA has concluded that it is appropriate to require mine operators to ensure that the professionals who conduct and evaluate audiometric tests do so in accordance with the requirements of the final rule.

Paragraph (a)(2)(ii) also requires the evaluator of the audiogram to determine whether a miner has incurred a standard threshold shift in hearing. Determination of a standard threshold shift triggers specific remedial actions, designed to prevent additional hearing loss. Commenters raised a number of issues concerning the appropriate definition for ''standard threshold shift,'' defined in § 62.101 of the final rule, which are addressed in detail in the preamble discussion of that section.

Paragraph (a)(2)(ii) of this section of the final rule also requires the evaluator of audiograms to determine if there has been a ''reportable hearing loss.'' Under part 50 of MSHA regulations, mine operators must notify MSHA within ten working days of detection of a miner's hearing loss. ''Reportable hearing loss'' is defined in § 62.101 of the final rule as a change in hearing sensitivity for the worse relative to a miner's baseline audiogram, of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear. Several commenters disagreed with the proposed definition of ''reportable hearing loss,'' and this issue is discussed in detail in the preamble in § 62.101.

Paragraph (a)(3) of this section of the final rule adopts proposed § 62.160(a)(3), with one addition, and requires the mine operator to instruct the physician, audiologist, or qualified technician not to reveal to the mine operator, without the written consent of the miner, specific findings or diagnoses unrelated to the miner's exposure to occupational noise or the wearing of hearing protectors. In response to commenters, the final rule includes qualified technicians among those who would receive this instruction. Although OSHA's air quality standards and benzene and lead standards contain similar provisions, neither MSHA's nor OSHA's noise standard currently includes such a restriction.

This aspect of the proposal elicited many comments. A number of commenters opposed the proposed restriction, for a variety of reasons. Some stated that if the physician or audiologist discovers a condition that could affect the safety or health of the miner or other miners in the workplace, the mine operator should be provided with that information, and the miner should not be permitted to withhold it. Others believed that if mine operators are required to pay for the testing, they are entitled to have access to the information. Still others believe that because mine operators are responsible for protecting miners against noise-induced hearing loss, all information relating to the miner's hearing loss, whether occupationally related or not, should be made available to mine operators or persons employed by operators to administer hearing conservation programs or who are responsible for the working conditions and job assignments of individual miners. On the other hand, one commenter stated that voluntary audiometric testing results should be treated as confidential medical information, and not be disclosed to anyone without the miner's consent.

MSHA has concluded that some protection must be provided to individual miners' medical information that is not occupationally related. Accordingly, to safeguard the privacy of individual miners, the final rule adopts the proposed provision that requires mine operators to instruct the physician or audiologist conducting the audiometric test not to reveal to the mine operator information that is not occupationally related.

Although MSHA agrees that it is conceivable that some non-occupational medical conditions (such as an inner ear condition that affects the miner's balance) discovered during an audiometric examination could have a bearing on a miner's safety at the mine site, it has concluded that concerns for the miner's privacy outweigh the mine operator's need for such information. Any greater access to results of audiometric testing could discourage miners from submitting to this voluntary testing. In any case, the miner is free to share such information with the mine operator if he or she chooses to do so.

Other commenters were concerned about the impact the proposed restriction would have on the ability of mine operators to defend against hearing loss claims filed under state workers' compensation laws. These commenters were afraid that the restriction would limit mine operators' access to relevant information on non-occupationally related conditions discovered during the course of audiometric testing, and would therefore prevent them from using this information as a defense. Nothing in the final rule would prevent a mine operator from arranging a medical examination for a miner to determine the validity of a workers' compensation claim. Such an examination would be outside the purview of this rule and not subject to the limitations imposed under this section. Additionally, information that is relevant to a workers' compensation claim may be subject to the discovery process in civil litigation and may be required to be produced under state law. The restriction in the final rule would not preclude such disclosure.

One commenter suggested that the final rule should make clear that physicians and audiologists who are employees of the mine operator have the same access to test findings and diagnoses as any other physician or audiologist, even though the company-employed professionals could be considered to be agents of the mine operator. The commenter believed that a literal interpretation of this provision would preclude company physicians or audiologists from either conducting audiometric tests or evaluating audiograms. MSHA agrees that medical professionals conducting audiometric testing who are employees of the mine operator should have the same access to test findings and diagnoses, and are bound by the same strictures on confidentiality as professionals who are independently employed. However, MSHA has concluded that clarification of this interpretation in the preamble is sufficient, and no specific provision needs to be included in the final rule.

Several commenters pointed out that the proposal would require the mine operator to instruct the physician or audiologist not to reveal information to the mine operator, but would not require a qualified technician performing the audiometric testing to be similarly instructed. This commenter believed that technicians should be given the same direction by the mine operator. As stated above, MSHA has adopted this comment in the final rule for consistency. The expectation is that the physician, audiologist, or qualified technician will receive the instruction from the mine operator and will ensure that the information will be protected.

Under paragraph (a)(4) of § 62.172 of the final rule, which has been adopted without change from § 62.160(a)(4) of the proposal, the mine operator must obtain the audiometric test results and the interpretation of the results from the person evaluating the audiogram within 30 days of the testing. OSHA's noise standard does not specify a deadline for the evaluation of audiograms.

Some commenters stated that 30 calendar days may not be sufficient for a mine operator to obtain audiometric test results from the test provider. Several commenters expressed concerns about this deadline, and felt that it would be unrealistic, particularly if a mobile test van provides the audiometric testing. A number of commenters suggested the deadline be extended to 60 days. One other commenter believed that 75 days would be appropriate. Other commenters believed it would be unfair to penalize the mine operator, who has little or no control over the promptness with which the test provider furnishes test results to the operator. Several commenters suggested that the final rule require mine operators to do what they can to obtain test results within 30 days, but should not penalize operators for late results when the delay is beyond their control. In contrast, one commenter recommended that the time limit be reduced to 15 days.

MSHA has determined that a 30-calendar-day time limit for the evaluation of audiograms is reasonable, and is necessary to prevent undue delays in the evaluation of the audiogram and in notification of the miner of the results. Because § 62.175 of the final rule allows mine operators 10 working days after receipt of test results to notify a miner of those results, more than 40 days may pass from the date of an audiometric test until the miner receives notification of the test results. In those cases where an audiometric retest is appropriate, miners may not receive their test results more than 100 days after the initial testing. MSHA has concluded that increasing the deadline to 60 or 75 days would result in unacceptably long delays in miner notification. Moreover, contrary to the assertions of commenters, MSHA does not believe that mine operators have little or no control over the promptness with which test results will be furnished. Under the final rule mine operators will either directly employ test providers, in which case meeting the 30-day time frame will be directly within their control, or contract for this service, in which case they may ensure that compliance with the 30-day deadline is a requirement of the contract. Accordingly, MSHA has concluded and the final rule reflects that the mine operator must obtain the requisite evaluation of an audiogram within 30 days.

Paragraph (b)(1) of § 62.172 of the final rule, which is adopted from § 62.160(b)(1) of the proposal, requires the mine operator to offer an audiometric retest within 30 calendar days of receiving a determination that an audiogram is invalid, provided any medical pathology has improved to the point that a valid audiogram may be obtained. If the results of an annual audiogram demonstrate a standard threshold shift or a reportable hearing loss, paragraph (b)(2) of this section allows a mine operator to offer the miner one retest within 30 calendar days of receiving the results. This will allow mine operators to verify the results of the annual audiogram. The mine operator may then substitute the results of the retest for the annual audiogram. These provisions are similar to provisions in OSHA's noise standard, which permits a retest within 30 days to confirm a standard threshold shift, but which does not specifically require a retest if the audiogram is judged to be invalid.

Few comments were received on this aspect of the proposal. One commenter stated that scheduling miners for a retest can be difficult, and recommended that the final rule allow 60 days for a mine operator to offer a miner a retest. One other commenter recommended that MSHA adopt the provisions in OSHA's standard for audiometric retests if a standard threshold shift is found.

Under the final rule, audiometric retesting where a miner's initial audiogram has been determined to be invalid must occur within 30 calendar days, provided that any medical pathology that may have prevented the taking of a valid audiogram has improved to the point where a valid retest can be conducted. It should be noted that the 30-day period does not begin until the medical pathology causing the problem has improved. The provision in paragraph (b)(2) for a retest after detection of a standard threshold shift allows the mine operator to substantiate that the shift has occurred and confirm that the hearing loss detected is permanent before taking required corrective actions such as miner retraining and review of the effectiveness of noise controls at the operator's mine. In the event that the miner declines to submit to a retest, the 30-day period within which corrective action must be taken would begin from the date of the miner's refusal of a retest.

MSHA has concluded that 30 days is a reasonable deadline for audiometric retesting, recognizing that 30 days may not be sufficient time for a retest if a mine operator must rely on a mobile test van to provide the retesting. However, where retesting is necessary, MSHA believes that it should be conducted as quickly as possible, and the mine operator may find it necessary to send the miner to the nearest available testing facility rather than waiting for a mobile test van.

Paragraph (c) of § 62.172, which is adopted unchanged from proposed § 62.160(c), allows the adjustment of audiometric test results for the contribution of age-induced hearing loss in determining whether a standard threshold shift or reportable hearing loss has occurred. Adjustment of audiometric test results for age-induced hearing loss is optional under the final rule; however, any such adjustment must be made to both the baseline and annual audiograms, in accordance with the procedures set forth in paragraphs (c)(1) through (c)(3). For each audiometric test frequency, determine from Table 62–3 or 62–4 the age correction values for the miner by: (1) Finding the age at which the baseline audiogram or revised baseline audiogram was taken and recording the corresponding values of age corrections at 2000 Hz through 4000 Hz; (2) Finding the age at which the most recent audiogram was taken and recording the corresponding values of age corrections at 2000 Hz through 4000 Hz; and (3) Subtracting the values found in step (1) from the value found in step (2). The differences calculated represent that portion of the change in hearing that may be due to aging. For example: the miner is a 32-year-old male. The audiometric history for his right ear is shown in decibels below.

Miner's age	Audiometric test frequency (Hz)		
	2000	3000	4000
26	5	5	10
27*	0	0	5
28	0	0	10
29	0	5	15
30	5	10	20
31	10	20	15
32*	10	10	25

The audiogram at age 27 is considered the baseline since it shows the best hearing threshold levels. Asterisks have been used to identify the baseline and most recent audiogram. A threshold shift of 20 dB exists at 4000 Hz between the audiograms taken at ages 27 and 32. (The threshold shift is computed by subtracting the hearing threshold at age 27, which was 5, from the hearing threshold at age 32, which is 25). A retest audiogram has confirmed this shift. The contribution of aging to this change in hearing may be estimated in the following manner. Go to Table 62–3 and find the age correction values, in dB, for 4000 Hz at age 27 and age 32.

	Frequency (Hz)		
	2000	3000	4000
Age 32	5	7	10
Age 27	4	6	7
Difference	1	1	3

The difference represents the amount of hearing loss that may be attributed to aging in the time period between the baseline audiogram and the most recent audiogram. In this example, the difference at 4000 Hz is 3 dB. This value is subtracted from the hearing level at 4000 Hz, which in the most recent audiogram is 25, yielding 22 after adjustment. Then the hearing threshold in the baseline audiogram at 4000 Hz (5) is subtracted from the adjusted annual audiogram hearing threshold at 4000 Hz (22). Thus the age-corrected threshold shift would be 17 dB (as opposed to a threshold shift of 20 dB without age correction).

OSHA's noise standard also permits the use of age-induced hearing loss

correction factors at the employer's option. OSHA's rationale for inclusion of these correction factors is that they aid in distinguishing between occupationally induced and age-induced hearing loss. This is particularly important because the pattern of hearing loss due to aging closely resembles that of hearing loss due to noise exposure.

Many commenters who addressed this issue supported the use of age correction factors. Some of these commenters believed that failure to adjust audiometric test results based on a miner's age would result in inaccurate data, and may indicate that there is a higher incidence of hearing loss due to workplace noise exposure than actually would be occurring. Some commenters stated that many older miners would be found to have a standard threshold shift. As a result, mine operators would be required to take unnecessary corrective measures at their mines to address these miners' hearing loss, which may be unrelated to occupational noise exposure. One commenter stated that adjustment for age-induced hearing loss is a widely accepted practice, and is supported by the scientific community and by the relevant scientific literature. Some commenters opposed the use of age corrections, because they were concerned that it could interfere with the detection of noise-induced hearing loss in some miners, and because necessary corrective actions would not be taken, and the miners' hearing would be permitted to deteriorate even further.

NIOSH currently recommends that audiograms not be corrected for age, based on the reasoning that it is inappropriate to apply age correction factors from a population to an individual. NIOSH maintains that if a worker's audiogram is to be corrected for age, the hearing loss of a non-occupational noise-exposed group with the same demographic characteristics as the worker should be used.

MSHA has concluded that the optional use of age correction factors is appropriate, and has adopted in the final rule the proposed provisions that allow it. Such adjustments are consistent with current scientific practice and with OSHA's noise standard.

MSHA agrees that not all individuals' hearing is affected to the same degree by age. Additionally, studies have shown that individuals in environments free from noise exposure display little evidence of age-induced hearing loss. However, MSHA agrees with the commenters who stated that failure to allow age correction in the final rule would result in many miners being found to have incurred standard threshold shifts, when the primary cause of the shift is the aging process.

The age correction procedures and tables included in the proposal and adopted in the final rule are those that were used by NIOSH in its 1972 Criteria Document on Occupational Exposure to Noise. Although there may be slight variations in adjustment at individual frequencies among similar tables developed by other researchers, the NIOSH age values are similar to those of other widely accepted and applied age-induced hearing loss data bases, such as the database of the U.S. Public Health Service, the data used by Robinson and Burns, and those of Passchier-Vermeer. The NIOSH data are derived from a highly screened population, that is, one which excluded individuals with any significant noise exposure on the job, off the job, or during military service. Use of a single set of age values will standardize the process of determining standard threshold shifts nationwide. Proposed Tables 62–3 and 62–4 have been adopted under the same numbers in the final rule.

Section 62.173 Follow-Up Evaluation When an Audiogram Is Invalid

This section of the final rule has been adopted from § 62.170 of the proposal, and establishes requirements for a follow-up evaluation of a miner's hearing if a valid audiogram cannot be obtained because of a suspected medical pathology caused or aggravated by noise exposure or the use of hearing protectors. This section also provides that, in the event that the medical pathology is unrelated to noise exposure or to the use of hearing protectors, the mine operator must instruct the physician or audiologist to inform the miner of the need for an examination. Finally, mine operators must instruct the physician, audiologist, or qualified technician not to reveal to the mine operator findings or diagnoses unrelated to the miner's occupational noise exposure or the wearing of hearing protectors. MSHA's current noise standards have no provisions that address follow-up evaluations.

Paragraph (a) of § 62.173 of the final rule provides that if a valid audiogram cannot be obtained due to a suspected medical pathology of the ear, and the physician or audiologist evaluating the audiogram believes that the problem was caused or aggravated by the miner's exposure to noise or wearing of hearing protectors, a miner must be referred for a clinical-audiological or otological evaluation, as appropriate, at the mine operator's expense. Section 62.101 of the final rule defines ''medical pathology'' as ''a condition or disease.''

Several commenters maintained that physicians should not be included among those who may determine that a miner needs a follow-up evaluation, because physicians who are not hearing specialists may not be qualified to determine that a miner needs a follow-up examination. MSHA has not adopted the suggestion of these commenters in light of the licensing and ethical standards that apply to physicians. The Agency expects that physicians will exercise professional judgment in assessing whether they possess the experience and qualifications to make the required medical determinations. This issue of the qualification of physicians is addressed in greater detail in the preamble discussion of § 62.170.

If the physician or audiologist believes that the suspected pathology that prevents taking a valid audiogram is related to occupational noise exposure or to the wearing of hearing protectors, the final rule requires the mine operator to pay for the miner's follow-up medical evaluations. Several commenters to the proposed rule were concerned that this could be read to require the mine operator to pay for a follow-up examination for an ear infection, if the audiologist or physician merely ''believes'' that the infection is aggravated by occupational noise exposure or the wearing of hearing protectors. These commenters stated that the mine operator should be required to pay only for treatment of conditions that actually result from noise exposure that occurs or hearing protectors that are used at the mine operator's facility.

The final rule reflects MSHA's conclusion that mine operators have primary responsibility for work-related medical problems. Under the final rule, if the physician or audiologist determines that the suspected medical pathology is unrelated to the miner's occupational noise exposure or to the wearing of hearing protectors, the mine operator must instruct the medical professional to inform the miner of the need for an otological examination. The final rule does not require the mine operator to pay for this examination, which will be at the miner's expense.

Another commenter suggested that mine operators be required to pay for follow-up evaluations only if there has been a determination of significant occupational noise exposure. The final rule does not adopt this comment, because a determination of the need for a clinical-audiological or an otological examination under this section should not be based solely on a miner's noise

exposure, but should be made after a review of a miner's audiometric records and a finding of a suspected medical pathology related to occupational noise exposure or the wearing of hearing protectors. In some cases information on a miner's noise exposure may be scarce or nonexistent. Although noise exposure measurements provided by the mine operator may form part of the basis upon which the qualified reviewer makes a determination, the final rule does not adopt the commenter's suggestion that mine operators be required to pay for follow-up examinations only when the miner has been exposed to significant occupational noise.

The preamble to the proposal noted that the type of follow-up evaluation that should be conducted as a result of the suspected medical pathology (clinical-audiological or otological) depends upon the specific circumstances in each case. Standards found in the international community and the U. S. armed forces vary to some degree regarding certain elements, such as the extent of follow-up examinations. A clinical-audiological evaluation is generally more comprehensive, intensive, and accurate than the routine audiometric testing conducted to identify a hearing loss, and may be warranted if, for example, an unusually large threshold shift occurs in one year given relatively low noise exposures. An otological evaluation, on the other hand, is a medical procedure conducted by a medical specialist such as an otolaryngologist to identify a medical pathology of the ear, such as an acoustic neuroma, a type of tumor. Another more common reason for an otological examination is for the removal of impacted ear wax, which reduces hearing sensitivity and can be aggravated by the use of earplug-type hearing protectors. Audiometric testing can indicate the existence of such medical pathologies.

Making the determinations under this section will not require a diagnosis by a physician-specialist confirming a medical pathology. The rule is intended to allow the audiologist or physician authorized to review the audiograms to make a determination as to whether a follow-up examination is appropriate-and who pays for it. Accordingly, the word ''suspected'' precedes the words ''medical pathology'' in this section.

Finally, one commenter suggested changing the term ''medical pathology'' in this paragraph to ''medical condition'', because the term ''pathology'' implies illness. The final rule does not adopt the suggestion of this commenter, because the definition of ''medical pathology'' in § 62.101 of the final rule is not limited to illness, and encompasses not only a ''disease'' but also a ''condition'' affecting the ear.

Paragraph (b) provides that if the physician or audiologist has concluded that the suspected medical pathology of the ear which prevents obtaining a valid audiogram is unrelated to the miner's exposure to occupational noise or the wearing of hearing protectors, the mine operator must instruct the physician or audiologist to inform the miner of the need for an otological evaluation. In such cases, the final rule imposes no financial obligation on the mine operator.

Paragraph (c) of § 62.173 adopts, with one addition, the proposed requirement that the mine operator instruct the physician or audiologist not to reveal to the mine operator any specific findings or diagnoses unrelated to the miner's exposure to noise or the wearing of hearing protectors without the written consent of the miner. As under the similar requirement in § 62.172, commenters suggested adding qualified technician to the list of persons that the mine operator must instruct. MSHA has adopted this suggested change in the final rule.

Some commenters were concerned that this restriction would be counterproductive and harmful to the miner in cases where the miner's medical condition should be better understood by the mine operator in order to allow the miner to be more effectively protected on the job. This aspect of the proposal, which is similar to the restriction in § 62.172(a)(3) of the final rule, was the subject of several comments. Some commenters were opposed to the proposed restriction for a variety of reasons. Some of these commenters stated that if the physician or audiologist discovers a condition that could affect the safety or health of the miner in the workplace, the mine operator should be provided with that information, and the miner should not be permitted to withhold it. One commenter was concerned about the impact the proposed restriction would have on the ability of mine operators to defend against hearing loss claims filed under state workers' compensation laws. Others maintained that because the mine operator is responsible for protecting miners against noise-induced hearing loss, all information relating to the miner's hearing loss, whether occupationally related or not, should be made available to the mine operator.

MSHA has concluded that some protection must be given to individual miners' medical information that is not occupationally related. Accordingly, to safeguard the privacy of individual miners, the final rule adopts the proposed provision that requires mine operators to instruct the physician or audiologist not to reveal to the mine operator information not occupationally related. A more detailed discussion of the basis for MSHA's conclusion on this issue can be found in the preamble under § 62.172(a)(3).

Section 62.174 Follow-Up Corrective Measures When a Standard Threshold Shift Is Detected

This section of the final rule, which adopts the requirements of proposed § 62.180, establishes the corrective measures that must be taken by a mine operator when a miner is determined to have incurred a standard threshold shift in hearing sensitivity. This section provides that, unless a physician or audiologist determines that the standard threshold shift is neither work-related nor aggravated by occupational noise exposure, mine operators must take specified corrective actions within 30 calendar days after receiving evidence or confirmation of a standard threshold shift. ''Standard threshold shift'' is defined in § 62.101 of the final rule as a change in hearing sensitivity for the worse relative to the miner's baseline audiogram (or revised baseline audiogram) of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

The corrective actions that mine operators are required to take under § 62.174 of the final rule when a miner experiences a standard threshold shift include: Retraining the affected miner in accordance with § 62.180 of the final rule, providing the miner with the opportunity to select a different hearing protector, and reviewing the effectiveness of any engineering and administrative controls to identify and correct any deficiencies.

A number of commenters supported the need for intervention by the mine operator when a miner has experienced a standard threshold shift. Several of these commenters stated that it should not matter whether or not a standard threshold shift is work-related, and that intervention should be required in any case to prevent further hearing loss. One of these commenters stated that it is probably not realistic to believe that the mining industry can identify outside causes of hearing loss. Another commenter was of the opinion that miners whose audiograms indicate such a degree of hearing loss should still be provided with information and training on how they can protect themselves. Still another commenter stated that the final rule should require additional

actions, including examination of the noise exposure of the affected miner or of other miners with similar occupations. This commenter strongly supported a requirement that the mine operator investigate the cause of the miner's standard threshold shift.

One commenter believed that effective training and audiometric testing would make corrective measures after the detection of a standard threshold shift unnecessary. This commenter added that miners should be encouraged to take responsibility for their own health. Several other commenters stated that the proposed requirements for corrective action underscored a need for mandatory participation by miners in audiometric testing. These commenters maintained that an effective hearing conservation program must require miners to submit to such tests.

MSHA has concluded that it is essential that mine operators be required to take certain corrective measures to prevent further deterioration of miners' hearing sensitivity after a standard threshold shift has been detected. A hearing loss of 10 dB is sufficiently significant to warrant intervention by a mine operator, unless it is determined the loss is not work-related. If miners are experiencing that level of occupationally related noise-induced hearing loss, as determined by a physician or audiologist, it is a clear indication that the noise controls in place at the work site have been ineffective. In such situations further action is appropriate to determine why the miner has not been adequately protected.

Paragraph (a) of § 62.174 of the final rule requires that the miner be retrained, which includes the instruction required by § 62.180 of the final rule, under which training must address such topics as the effects of noise on hearing, the value and effective use of hearing protectors, the operator's and miner's respective tasks in maintaining mine noise controls, and the value of audiometric testing. Commenters on this aspect of the proposal generally supported the training requirement.

As indicated in the preamble to the proposal, if the noise controls in place are effective—including the training—this hearing loss should not be occurring. Providing the miner with retraining after the miner has experienced a standard threshold shift is intended to ensure that the miner is not inadvertently being overexposed to noise because of a lack of awareness about effective use of noise controls or hearing protectors. This retraining may also emphasize to the miner the importance of regular audiometric testing, to ensure that the hearing loss does not progress. Also as indicated in the preamble to the proposal, the required training may be conducted in conjunction with annual refresher training under 30 CFR Part 48, but only if the training will be conducted within 30 days of the detection of the standard threshold shift, the time frame established in this section.

Paragraph (b), like the proposal, requires the mine operator to provide the miner with an opportunity to select a hearing protector, or a different hearing protector if the miner has previously selected a hearing protector, from among those offered by the mine operator in accordance with § 62.160. Several commenters advocated the inclusion of the additional requirement that the hearing protector be checked to ensure that it is in good condition, and replaced if necessary. These commenters also recommended that miners should be encouraged to select a hearing protector providing greater noise reduction.

The final rule, like the proposal, allows miners to select their own hearing protectors. The effectiveness of any hearing protector depends on a number of factors, only one of which is its noise reduction rating value. Even though a miner may not select the hearing protector with the highest noise reduction rating, factors such as comfort, fit, and personal preference are critical in ensuring that the miner will fully utilize this essential piece of personal protective equipment. Moreover, there is no standardized objective method to determine the degree of protection a given hearing protector will provide a miner. MSHA has therefore determined that requiring that miners be encouraged to select a hearing protector based primarily or exclusively on the protector's noise reduction rating value would not be well advised, and this comment has therefore not been adopted in the final rule. The final rule also does not adopt commenters' suggestions that mine operators be required to check the fit and condition of the hearing protector and replace it, if necessary, because these concerns are already addressed in other sections of the final rule. As § 62.180 of the final rule requires that miner training address the care, fitting, and use of hearing protectors, miners will be trained to evaluate the condition of their hearing protectors and notify the mine operator when the condition of the protector has deteriorated and needs to be replaced. The issue of selection and effectiveness of hearing protectors is addressed in greater detail in the preamble discussion of § 62.160.

Several commenters supported the addition of a requirement that the miner use a hearing protector and the mine operator enforce its use when a standard threshold shift is detected. The final rule also requires that the mine operator provide and ensure that miners wear hearing protectors under certain conditions, including when the miner incurs a standard threshold shift and is exposed to noise at or above the action level. A more detailed discussion of mandatory use of hearing protectors is included under § 62.130 of the preamble, which addresses the permissible exposure level.

Paragraph (c) of this section of the final rule requires the mine operator to review the effectiveness of any engineering and administrative noise controls, in order to identify and correct any deficiencies. The implementation and maintenance of engineering and administrative noise controls when miners are subjected to noise exposures above the permissible exposure level is the primary method for reducing miners' noise exposure and their risk of hearing loss. Because ineffective engineering and administrative controls may be the primary cause of a miner's standard threshold shift, the final rule requires the mine operator to review the effectiveness of existing controls and update or modify them to enhance the protection provided to miners. OSHA's existing noise standard does not require such a review when a standard threshold shift is detected.

Some commenters supported the proposed review of engineering and administrative controls when a miner experiences a standard threshold shift. However, several commenters noted that a mine operator should not be required to review the effectiveness of engineering and administrative noise controls if the standard threshold shift occurs in a single miner and can be positively attributed to the inaction of that miner.

This comment has not been adopted in the final rule. Mine operators are responsible for protecting miners from overexposures to noise at the mine site. The mine operator must determine which are the best and most protective controls for the particular operation. The degree to which the noise controls that have been implemented rely on the actions of individuals may have some bearing on how well the controls work. Effective engineering noise controls protect the miner without the need for the miner's active participation. If the controls in place rely too heavily on the participation of a miner and have

proven to be inadequate (as evidenced by the detection of a standard threshold shift), a prudent mine operator will explore implementation of engineering controls that will be effective regardless of the miner's actions. The mine operator determines working conditions at the mine site and is responsible for ensuring the design, implementation, and use of effective controls to protect miners from overexposure to noise and resulting hearing loss.

Although the proposed rule would not have provided for the transfer of a miner with a diagnosed occupational hearing loss to a low-noise work environment, MSHA did solicit comments on whether a miner transfer provision was necessary. Some commenters stated that it would not be appropriate to include a miner transfer provision in the final rule, arguing that miners could manipulate audiogram results (for example, by listening to loud music prior to the test) in an attempt to force mine operators to move them to different, more desirable jobs. Other commenters supported the concept of a miner transfer provision, arguing that this is appropriate when other efforts to halt the progression of the miner's hearing loss have failed and that miners who were transferred should suffer no loss in wages or benefits as a result, similar to the provisions in MSHA's part 90 regulations for coal miners who have evidence of black lung disease.

The preamble to the proposed rule suggested that a miner transfer program would be extremely complex for mine operators to administer, and may be quite infeasible for the metal and nonmetal mining industry. The majority of metal and nonmetal mines are smaller mines, many of which would be unable to rotate miners with hearing loss to other, less noisy assignments on a long-term basis. Although MSHA encourages mine operators to transfer miners who have incurred a hearing impairment to jobs with reduced noise exposure, it has concluded that a miner transfer provision is not feasible at most small mining operations, due to the small number of employees and the limited number of positions with low noise exposure to which miners with hearing loss could be transferred. Because of the significant feasibility problems presented by mandatory miner transfer and the lack of consensus in the mining community on the advisability of a transfer program, the final rule does not adopt a miner transfer provision.

Section 62.175 Notification of Results; Reporting Requirements

This section of the final rule is identical to § 62.190 of the proposal, providing for miner notification of audiometric test findings and for notification to MSHA of any instances of ''reportable hearing loss,'' as defined in § 62.101 of the final rule.

Paragraph (a) of this section of the final rule requires that mine operators notify the miner in writing of the results of an audiogram or a follow-up evaluation within 10 working days of receiving the results. There are no existing MSHA regulations that impose such a requirement.

MSHA received no comments opposing a miner notification requirement, although several commenters believed that mine operators should be required to notify a miner of test results only when the results indicate a significant shift in the miner's hearing level, consistent with OSHA requirements. These commenters believed that miner notification was not warranted if the audiometric test indicated no additional hearing loss.

Commenters disagreed on the length of the period within which such notification should occur. Several commenters recommended that MSHA adopt the provision in OSHA's noise standard that requires employee notification within 21 days. Other commenters recommended a 15-day deadline, while still others believed that a 30-day deadline was appropriate. The commenters who supported a longer period believed that 10 days was insufficient to allow mine operators to review the audiograms and to provide the required notification, particularly if large numbers of miner audiograms were conducted and processed at the same time. One commenter stated that miners should be informed of a standard threshold shift at the time of the test, and provided with the results of audiograms within 5 days rather than 10.

Although no commenter specifically objected to the requirement that the miner notification be in writing, several commenters stated that the method of notification should be left to the discretion of the mine operator. Another commenter recommended that mine operators notify miners in a timely manner and also share the results with other miners during annual refresher training, apparently based on the belief that if miners hear of co-workers' hearing losses, it might serve to reinforce their own understanding of the need for noise controls and the importance of using hearing protectors.

After considering the comments, MSHA has concluded that informing miners of the results of their audiometric tests in a timely manner is critical to the effectiveness of a hearing conservation program. Immediate feedback to the miner at the completion of the test provides the greatest benefit, because that is the point at which miners typically have the greatest interest in information on the effects of noise on their hearing, and are more likely to take action, such as wearing hearing protectors conscientiously; stringently complying with administrative noise controls; or continuing to submit to audiometric testing.

The Agency realizes that it may not be practical to inform miners immediately of the results of their audiometric tests. However, because of the importance of the information, it is necessary to establish a maximum time frame for mine operators to inform miners of the audiometric test findings and results. Therefore, the final rule adopts the requirements of the proposed rule and allows mine operators up to 10 working days after the receipt of test results to inform the miner. This means that mine operators will have up to two weeks to make this notification, which is a sufficient time frame for this notification.

MSHA has also concluded that it is appropriate to require written notification to miners of their test results. Important that miners are made aware of their test results, and written notice minimizes the risk of misunderstanding on the part of miners. Some commenters stated that notification is necessary only when a standard threshold shift has occurred, but MSHA believes that notification of good results serves to reinforce effective practices and strengthens the effects of a hearing conservation program.

Because of the confidentiality of audiometric test results, it would be inappropriate, as suggested by a commenter, for the final rule to require a mine operator to share an individual miner's test results with other miners. The final rule therefore does not adopt this comment.

Paragraph (a)(1) of this section adopts without change § 62.190(a)(1) of the proposal, and requires that the mine operator inform the miner of the results and interpretation of the audiometric test, including any finding of a standard threshold shift or reportable hearing loss. This differs from OSHA's noise standard, which only requires notification of a confirmed standard threshold shift. The requirements of this paragraph ensure that miners receive timely information of the results of their audiometric tests, and can take appropriate actions in conjunction with the mine operator, in order to reduce

further occupational noise-induced hearing loss.

Paragraph (a)(2) of § 62.175, like the proposal, requires that the mine operator notify the miner of the need and reasons for any further testing or evaluation, if applicable.

One commenter stated that a mine operator could not notify miners of the reason for further testing or evaluation, because under the proposal, adopted in § 62.173(c) of the final rule, mine operators would not be told of findings or diagnoses when the condition diagnosed is not work-related. MSHA has concluded that this limitation does not present an obstacle to mine operators notifying miners of the need and reasons for further testing or evaluation. If the problem encountered is occupationally related, the mine operator will be informed of the specific reasons why a follow-up is needed. If the problem is not occupationally related, the mine operator will be informed only that a follow-up is warranted and must pass that information on to the miner as part of the notification required under this section. MSHA expects that in most if not all cases miners will already be aware of both the need and reasons why a follow-up is recommended, because the person performing the audiometric tests will convey this information to them during the course of the test. Notification by the mine operator will reinforce any information that may have been provided to the miner during the test procedure.

Paragraph (b) of § 62.175 of the final rule, like the proposal, requires mine operators to inform MSHA when a miner has incurred a reportable hearing loss as defined in part 62, unless the physician or audiologist has determined the loss is neither work-related nor aggravated by occupational noise exposure. This provision parallels existing requirements in part 50, which require mine operators to report a miner's hearing loss whenever a physician determines that it is work-related, or whenever an award of compensation is made. Section 50.20–6 specifically includes noise-induced hearing loss as an example of a reportable occupational illness. However, § 62.101 of the final rule now provides an explicit definition of ''reportable hearing loss,'' in order to clarify mine operators' compliance responsibilities and promote the development of improved data on hearing loss in the mining community.

Section 62.101 of the final rule adopts the proposed definition of ''reportable hearing loss'' as a change in hearing sensitivity for the worse, relative to the miner's baseline audiogram, of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear. The issue of the definition of reportable hearing loss is discussed in the preamble under § 62.101.

An important goal of the final rule is to clarify the level of hearing loss that is reportable to MSHA under part 50. MSHA acknowledges that its current reporting requirements have resulted in inconsistent reporting; some mine operators have reported even small hearing losses, while other operators only report a miner's hearing loss when the miner has received an award of compensation. In other cases, mine operators have not reported a miner's hearing loss even when an award of compensation was made because the miner had retired. Inconsistent reporting of miners' hearing loss may also stem from the fact that the definition of compensable hearing loss under workers' compensation laws varies widely from state to state. For these reasons, MSHA had concluded that its miner hearing loss data under part 50 tends to underestimate the prevalence or degree of hearing loss in the mining industry.

Providing a specific definition in the final rule for ''reportable hearing loss'' as it is used under part 50 is intended to eliminate exclusive reliance on workers' compensation awards as a criterion for defining when noise-induced hearing loss must be reported. Nevertheless, part 50 will still require that mine operators report to MSHA hearing loss for which an award of compensation has been made if the hearing loss has not been previously reported. Two examples of such cases are: (1) If the miner incurred the hearing loss before the current mine operator conducted the baseline or pre-employment audiogram and subsequent testing did not measure a reportable loss; and (2) if the miner has not been in a hearing conservation program or has not received an audiometric test while employed by the mine operator.

In determining what degree of occupational hearing loss should be reportable under part 50, MSHA gave serious consideration to the fact that a hearing loss of 25 dB diminishes the quality of life. The hearing loss that is reportable under the final rule, although not equal to material impairment, is substantial enough to diminish the quality of life, and it provides a reliable indication of the effectiveness of the existing action level and permissible exposure level.

Several commenters expressed support for the proposed provision, which is adopted unchanged in this section of the final rule, that a mine operator is not required to report a miner's hearing loss to MSHA if a physician or audiologist has determined that the loss is neither work-related nor aggravated by occupational noise exposure. However, some commenters advocated that any hearing loss be presumed to be non-occupationally related, and that the final rule should require the physician or audiologist to determine definitively that the hearing loss is work-related before the hearing loss would be reportable. These commenters objected to the fact that the proposal seemed to presume that any hearing loss detected would be both noise-induced and work-related.

The final rule reflects MSHA's determination that it is reasonable to place the responsibility on the physician or audiologist to determine when a hearing loss is unrelated to the miner's occupational exposure to noise or to the wearing of hearing protectors. Although in some cases it may not be easy to determine whether an identified hearing loss is work-related or not, the final rule follows the approach of the proposal that the loss would be reportable in the absence of evidence that the hearing loss is not work-related. MSHA has concluded that this approach is the most protective for miners, and has adopted it in the final rule.

Several commenters stated that the rule is unclear regarding who would be responsible for reporting a loss when a miner has been employed by several operators. MSHA specifically solicited comments in the proposal on how to capture data on work-related noise-induced hearing loss that is not discovered until after the miner's employment is terminated, or that the miner had accumulated from work with several employers. Commenters did not provide any data, information, or suggestions. The final rule requires the mine operator currently employing the affected miner to report the hearing loss no matter where the miner may have incurred the loss, provided it has not been previously reported.

The final rule does not require that mine operators report the same ''reportable hearing loss'' to MSHA each year that the miner works at the mine. An additional report to MSHA under part 50 of a hearing loss involving the same miner is required only if the miner has incurred an additional 25-dB shift (50-dB shift from the original baseline). However, each ear should be treated independently in terms of reporting hearing loss, unless the reportable loss occurs in both ears during a particular year. Although not specifically required in the final rule, MSHA anticipates that

mine operators will report under part 50 the actual average hearing loss, the ear(s) in which the reportable loss occurred, and whether the audiograms were corrected for age-induced hearing loss.

Section 62.180 Training

This section establishes specific requirements for training miners under the final rule. These requirements are very similar to requirements proposed under §§ 62.120(b)(1) and 62.130. Under the final rule, training of miners is one of the elements of a hearing conservation program. Mine operators are required to enroll miners in hearing conservation programs under § 62.120, and to provide training under § 62.180 to miners whose noise exposure equals or exceeds the action level under § 62.120. Miners are also required under § 62.160(a)(1) to be trained before they select hearing protectors. Retraining the miner, including the instruction required under this section, is also required under § 62.174(a) when the miner is determined to have experienced a standard threshold shift.

Section 62.180(a) requires that mine operators provide miners with initial training under this section within 30 days of their enrollment in a hearing conservation program. Retraining at least every 12 months thereafter must be provided if a miner's exposure continues to equal or exceed the action level under § 62.120. The proposal would have required that mine operators provide a miner with initial training at the time that the miner's exposure exceeded the action level. In response to commenters who were concerned that the proposal did not set a deadline for such training, the final rule requires that initial training be conducted within 30 days of a miner's enrollment in the hearing conservation program. OSHA's noise standard includes training requirements that are similar to those in the final rule.

Paragraphs (a)(1) through (a)(7) of § 62.180 of the final rule, like § 62.130(a) of the proposal, establish specific requirements for the training and retraining of miners. Under the final rule, the mine operator must provide the miner with instruction in the areas of: the effects of noise on hearing; the purpose and value of wearing hearing protectors; the advantages and disadvantages of the hearing protectors to be offered; the care, fitting, and use of the hearing protector worn by the miner, and the various types of hearing protectors offered by the mine operator; the general requirements of part 62; the mine operator's and miner's respective tasks in maintaining mine noise controls; and the purpose and value of audiometric testing and a summary of the procedures. Few commenters specifically addressed the topics in the noise training program. However, several commenters stated that it was important to stress the selection, fitting, use, and limitations of hearing protectors.

Although all commenters appeared to support the concept of training miners on noise-related topics, they disagreed about whether a separate training requirement was warranted. Some commenters believed that training miners under this part was unnecessary because miners are already required to receive training under existing MSHA regulations in part 48, which require regular training of miners on a variety of safety-and health-related topics, including the purpose of taking noise measurements. Some of these commenters were concerned that the training requirements under this part would create additional recordkeeping requirements for mine operators and would not serve any purpose, and they opposed adding additional training requirements under this part.

Other commenters stated that there is not enough time to cover all the topics required under part 48 training, and therefore separate training under this part was appropriate, to ensure that miners were well informed about the hazards of noise and how to ensure that they are adequately protected. Some of these commenters supported training on work-related noise hazards as well as proper fitting of hearing protectors. They argued that miners need training to make them aware of the damage acoustical energy can do to hearing, and that the proposed rule seemed to suggest that there was no need to train workers until they have been enrolled in a hearing conservation program. These commenters advocated training as a preventive measure rather than as after-the-fact treatment.

In the preamble to the proposed rule, MSHA stated that there is considerable precedent for requiring training as part of hearing conservation programs. As indicated in the preamble, Suter (1986) states, ''Workers who understand the mechanism of hearing and how it is lost will be more motivated to protect themselves.'' Other researchers concur with this opinion (Wright, 1980; Royster et al., 1982). Moreover, the first line of defense against risks in mining has always been training. Accordingly, the final rule provides for annual instruction to enhance awareness of noise risks, operator requirements, and available controls. This training is required for any miner whose noise exposure is at or above the action level, an exposure which MSHA has identified to be hazardous.

MSHA has determined that specialized training on the hazards of noise and the importance of hearing conservation is necessary because, as several commenters pointed out, part 48 training typically does not routinely include detailed training on noise and hearing loss. One reason for this, as commenters also pointed out, is that there are a number of safety and health topics required to be covered under part 48 in a relatively short period of time. This does not allow the type of in-depth training on a narrow topic that is contemplated under this final rule.

Several commenters took issue with the proposed requirement that the training be provided ''at the time'' that the miner's noise exposure exceeds the action level. These commenters stated that the language should be modified to allow the mine operator more flexibility regarding how and when training is conducted. Some commenters recommended one week, while others suggested that mine operators be allowed 30 days to satisfy this requirement, in order to accommodate varying shift schedules and to develop and conduct an effective training program. One commenter recommended that the final rule specify at least one hour of initial training be given and at least 30 minutes of annual retraining be given.

MSHA agrees that the language of the proposed rule could be read to allow mine operators little time to provide training under this part, and the final rule allows mine operators 30 days to provide the training after a miner has been enrolled in a hearing conservation program. Under § 62.120 of the final rule, mine operators must enroll a miner in a hearing conservation program when the miner's noise exposure equals or exceeds the action level. This time frame will ensure that miners receive the necessary training in a timely manner, while at the same time providing mine operators with a reasonable amount of time to provide the training.

The final rule does not provide detailed requirements for the training provided by the mine operator. Instead, like other performance-oriented aspects of this final rule, mine operators have the flexibility under this section to determine how best to provide the training as well as which programs are best suited to conditions at their mines. The final rule requires that certain topics be covered by this training, but does not specify how long the training must last nor what qualifications the

training instructors must have. Unlike part 48, the final rule does not require MSHA approval of the mine operator's training plan. However, mine operators may satisfy the requirements of the final rule and part 48 with the same training, provided that training complies with both sets of requirements.

MSHA intends that the training required under the final rule address the advantages and disadvantages of different types of hearing protectors, including earmuffs, earplugs, and canal caps as they relate to the needs of the miner and the specific conditions at the mine. In addition, the mine operator should discuss the specific advantages and disadvantages of any special hearing protectors offered.

MSHA recommends that mine operators tailor the training provided under the final rule to the operations at their mines, and may choose to emphasize certain topics more than others. Although the final rule provides a basic framework for minimum areas of instruction, the training requirements provided here are intended to be performance-oriented and allow for training to be tailored to the individual mine's circumstances or to individual needs.

Effective training of miners serves to enlist miner participation in hearing conservation, which is critically important for proper use of hearing protectors and compliance with applicable administrative noise controls. Effective training of miners also helps to ensure that miners will submit to regular audiometric testing, which is completely voluntary on the part of miners under the final rule. Studies have shown a correlation between instruction and the amount of protection afforded a miner by the use of hearing protectors. These include Merry et al. (1992), Park and Casali (1991), Barham et al. (1989), and Casali and Lam (1986).

Section 62.180(b) of the final rule adopts the proposed requirement that the mine operator certify the date and type of training given each miner and maintain the miner's most recent certification for as long as the miner is enrolled in the hearing conservation program and for at least 6 months thereafter. The final rule does not adopt the proposed requirement that the person conducting the training sign the certification, nor that the certification be maintained at the mine site.

A few commenters recommended that the miner be required to sign the training certificate. This comment has not been adopted in the final rule. MSHA does not believe that requiring the miner to sign a certificate furthers the goal of providing quality training. This is appropriate, given the fact that the mine operator is ultimately responsible for providing adequate training to miners under this final rule. For the same reason, the proposed requirement that the training provider sign the certification has not been adopted.

Some commenters strongly urged that the final rule allow training certification to be maintained at locations other than the mine site, since it may be more efficient for some mine operators to store records at a central location. MSHA agrees, particularly in light of the fact that electronic records are becoming more common in the mining industry and may be stored on computer at centralized locations. The final rule therefore allows mine operators to store training certifications at a location other than the mine site. However, they must be stored in sufficient proximity to the mine to be produced for an MSHA inspector within a relatively short period of time. MSHA expects that in most cases this will be no longer than one business day.

Mine operators must retain the most recent training certification for as long as a miner is in the hearing conservation program and for at least 6 months thereafter. There were only a few comments on this issue. One commenter suggested that the training records should be maintained for 12 months, rather than 6 months, beyond the miner's enrollment in a hearing conservation program, but did not explain why that would be preferable.

The final rule adopts the proposed requirement that training records be kept as long as the miner is in the hearing conservation program and for at least 6 months thereafter. As stated in the proposed preamble, the retention period is short and not burdensome—only the most recent certifications must be retained and only for 6 months after the miner's enrollment in the hearing conservation program has ended. These records will serve to allow MSHA inspectors to verify that the required training has been provided.

Section 62.190 Records

The requirements of proposed §§ 62.200 and 62.210 are combined in § 62.190 of the final rule, and address access to and transfer of records required to be kept under this rule. The final rule defines ''access'' as the right to examine and copy records. MSHA's final rule is essentially the same as OSHA's requirements.

Under paragraph (a), as in the proposal, the mine operator must provide authorized representatives of the Secretaries of Labor and Health and Human Services with access to all records required under this part. Several commenters stated that confidential medical records should be accessible to government agencies only with the written consent of the miner. MSHA has a statutory right to have access to records, including medical records. Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) provides that:

> In addition to such records as are specifically required by this Act, every operator of a coal or other mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary or the Secretary of Health, Education, and Welfare [now Health and Human Services] may reasonably require from time to time to enable him to perform his functions under this Act * * *

The Agency believes that access to medical records is essential; the records will be valuable in enforcement of the final rule, will be useful in research into the effects of occupational noise exposure, and will help to evaluate the effectiveness of hearing conservation programs.

Another commenter noted that the preamble stated that mine operators would have to provide authorized representatives of the Secretaries with immediate access to all records required under this part. It was not MSHA's intent that records be provided immediately to authorized representatives of the Secretaries. MSHA agrees that requiring immediate access to records to authorized representatives of the Secretaries might be too restrictive or burdensome on the mine operator. Although the preamble to the proposal contained the term ''immediate,'' the final rule does not. Following current practice, MSHA intends that authorized representatives of the Secretaries have access to records within a reasonable amount of time that does not hinder the authorized representatives' conduct of business. In most cases MSHA expects that this will be no longer than one business day.

MSHA solicited comment on what actions would be required, if any, to facilitate the maintenance of records in electronic form by those mine operators who desire to do so, while ensuring access in accordance with these requirements. The Agency received several comments supporting electronic storage of records, but no specifics regarding actions required to facilitate the maintenance of the records in electronic form.

As in the proposal, paragraph (a) of the final rule also provides that, upon written request, the mine operator must

provide, within 15 calendar days of the request, access to records to miners, former miners, miners' designees, and representatives of miners. The first copy must be provided at no cost, and any additional copies at reasonable cost.

Several commenters supported the provisions of access and transfer of records, but suggested that MSHA have a separate standard, as OSHA does. The provisions in this final rule are similar to those in other health standards proposed in recent years by MSHA and are similar to OSHA's. MSHA and NIOSH have statutory rights to access of records, but since MSHA does not have generic recordkeeping and access requirements, including recordkeeping and retention requirements in the substantive noise regulation will facilitate compliance. This will provide the regulated community with better clarity regarding applicable requirements.

Paragraph (a)(1) of this section of the final rule remains relatively unchanged from the proposal and provides that a miner, or a miner's designee with the miner's written consent, has access to all the records that the mine operator is required to maintain for that miner under this part. Several commenters asked whether the term ''miner's designated representative'' used in § 62.200(a)(1) of the proposal referred to the representative designated by two or more miners under part 40 of MSHA's regulations. In fact, the term ''miner's designated representative'' used in § 62.200(a)(1) of the proposal was intended to refer to a representative specifically designated by the miner to have access to records. MSHA agrees that the terms used in the proposed rule are imprecise; the final rule now substitutes the term ''miner's designee'' in paragraph (a)(1) for ''miner's designated representative.'' The term ''miner's designee'' has also been defined in § 62.101 of the final rule as ''an individual or organization to whom a miner gives written authorization to exercise a right of access to records.'' These changes are intended to make clear that the ''miner's designee'' referred to in this section is not a representative of miners designated under part 40.

Paragraph (a)(2) clarifies that the miners' representative referred to is the representative designated under part 40 of the regulations. Section 62.200(a)(2) of the proposal used the ambiguous term ''miners' representative'' and left doubt in some commenters' minds as to whether this was the miners' representatives under part 40. Commenters expressed concern that although the Mine Act gave the part 40 miners' representative access only to training records and exposure records, not to confidential medical records, the proposed rule language was unclear on this distinction. Paragraph (a)(2) of this section of the final rule clarifies the intent of the proposed rule that miners' representatives designated under part 40 have access to training certifications compiled in accordance with § 62.180(b) of the final rule, and to notices of exposure determinations in accordance with § 62.110(d). Paragraph (a)(2) does not provide for access to medical records by the part 40 miners' representative. This is consistent with the requirements of the Mine Act, and responds to commenters who were concerned about maintaining the confidentiality of miners' medical records.

The final rule does not adopt the provision in proposed § 62.200(a)(1) that would have provided former miners with access to all records that the mine operator would be required to maintain under part 62. Instead, the final rule provides that any former miner may have access to records which indicate his or her own noise exposures. This revision results from MSHA's recognition that the Mine Act gives former miners limited access to records. Section 103(c) of the Mine Act explicitly provides that ''[s]uch regulations [those dealing with toxic substances and harmful physical agents] shall also make appropriate provisions for each miner or former miner to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents.'' Paragraph (a)(3) has therefore been added to the final rule to make clear that a former miner may have access to those records which indicate his or her own noise exposures, but not to other records that are required to be kept by the mine operator under this part, as would have been required under the proposal.

One commenter stated that the operator should not be responsible for providing access to records for anyone other than the affected employee unless such employee is totally incapacitated, arguing that review of the preamble and the section-by-section analysis provides no rationale for including persons other than the employee to have access to records. MSHA has determined, however, that miners should have the right to designate someone to access records on their behalf, if they so desire. For example, a miner who is ill can authorize a designee (who may be a family member) to retrieve a copy of his or her records.

Several commenters stated that records should not be directly accessible to any private organizations. Under the final rule, a private organization may only have access if a miner selects the organization as his or her designee. In that case, the organization would have access as the miner's designee to all records required to be kept under this part for that individual miner.

One commenter maintained that the miner's designee should not be required to have written permission to see his or her records when no other person with access is required to have it. The commenter argues further that if this is due to the confidentiality of medical records, then anyone should be required to have the written permission of the miner, including MSHA and NIOSH. However, these agencies have a statutory right to access to records and do not need the written consent of the miner, but a designee does not and would therefore need written authorization to access records that may contain personal, private information.

Paragraph (a)(2) requires that any representative of miners designated under part 40 of this title must have access to noise training certifications required under § 62.180(b) as well as any notice of exposure determination in accordance with § 62.110(d) of this part for the miners he or she represents. Several commenters stated that the miners' representative should not have access to miners' records unless the miner has given written consent. One commenter stated that MSHA should change this section to provide access only to the individual miner involved. Several commenters stated that MSHA should clarify that the miners' representative will only have access to the training certificate.

MSHA intends that the miners' representative have access to training certifications and exposure determination records for miners they represent, without the written consent of individual miners. Providing access to training certifications is consistent with the Agency's part 48 training regulations at §§ 48.9 and 48.29, which require training certificates for each miner to be available for inspection by the miners' representative. Further, section 103(c) of the Mine Act states:

> The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, [now Health and Human Services] shall issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act. Such regulations shall provide miners or their representatives with an opportunity to observe such

monitoring or measuring, and to have access to the records thereof * * *

The final rule does not adopt proposed paragraph (b) of this section, which would have required an operator, upon termination of a miner's employment, to provide the miner (at no cost) a copy of all records that the operator is required to maintain for that individual miner under this part. The majority of commenters stated that it would be unduly burdensome to supply records to all terminated employees, that the provision was redundant with paragraph (c), and that records should only be provided to those employees who provide a written request for them. MSHA agrees that mine operators should not have to provide copies of records to miners unless requested to do so. Paragraph (c) of this section of the final rule, therefore, like the proposal, allows persons who have access to records to request a copy of all records from the mine operator. MSHA believes that this requirement will provide miners necessary information about their health. Proposed paragraph (b) has therefore not been adopted in the final rule.

Paragraph (a)(3), which is identical to proposed 62.200(c), states that when a person with access to records requests a copy of a record, the first copy must be provided without cost to that person, and any additional copies requested by that person must be provided at reasonable cost. Several commenters suggested that MSHA define ''reasonable cost'' so that mine operators can properly determine whether they are complying with the requirements of this part when charging for additional copies. The Agency expects mine operators to charge reasonable copying costs and labor rates which are generally applicable in their geographical locations for the same or similar services and which may vary somewhat from place to place. Therefore, the final rule does not adopt this comment.

Paragraph (b)(1) is similar to proposed § 62.210(a), requiring the mine operator to transfer all records required to be maintained by this part, or copies of them, to a successor mine operator who must maintain the records for the length of time required by this part. Several commenters supported the provision as proposed. One commenter stated that MSHA should clarify that this requirement does not apply to a successor operator hiring a miner who has never worked at that mine location. MSHA considers paragraph (b)(1) clear in stating that the mine operator must transfer all records required to be maintained by this part to a successor mine operator who then becomes responsible for maintaining them for the period required.

Paragraph (b)(2) is identical to proposed § 62.210(b), requiring the successor operator to use the baseline audiogram, or revised baseline audiogram as appropriate, obtained by the original operator for determining the existence of a standard threshold shift or reportable hearing loss. MSHA believes that requiring successor mine operators to maintain the prior baseline audiogram will provide miners with the greatest possible degree of protection. Otherwise, if a new baseline were allowed to be established by the arrival of a successor mine operator, the record of any existing hearing loss would be wiped out and reporting or corrective action postponed. The Agency did not receive any comments on this provision, and paragraph (b)(2) is adopted as proposed.

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List of Subjects

30 CFR Parts 56 and 57

Metals, Mine safety and health, Noise control.

30 CFR Part 62

Mine safety and health, Noise control.

30 CFR Parts 70 and 71

Coal, Mine safety and health, Noise control.

Dated: August 30, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, Chapter I of Title 30 of the Code of Federal Regulations is amended as follows:

PART 56—[AMENDED]

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 56.5050 [Removed]

2. Section 56.5050 and the undesignated center heading preceding it are removed.

PART 57—[AMENDED]

3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 57.5050 [Removed]

4. Section 57.5050 and the undesignated center heading preceding it are removed.

PART 70—[AMENDED]

5. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811 and 961.

Subpart F—[Removed]

6. Subpart F (§§ 70.500 through 70.511) is removed.

PART 71—[AMENDED]

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

Authority: 30 U.S.C. 811, 951, 957, 961.

Supbart I—[Removed]

8. Subpart I (§§ 71.800 through 71.805) is removed.

Subchapters M and N—[Redsignated]

9. Subchapter M is redesignated as Subchapter I, Subchapter N is redesignated as Subchapter K, and Subchapter N is reserved.

10. A new Subchapter M is added, ''Uniform Mine Health Regulations.''

11. A new part 62 is added to new Subchapter M to read as follows:

PART 62—OCCUPATIONAL NOISE EXPOSURE

Sec.
62.100 Purpose and scope; effective date
62.101 Definitions
62.110 Noise exposure assessment
62.120 Action level
62.130 Permissible exposure level
62.140 Dual hearing protection level
62.150 Hearing conservation program
62.160 Hearing protectors
62.170 Audiometric testing
62.171 Audiometric test procedures
62.172 Evaluation of audiograms
62.173 Follow-up evaluation when an audiogram is invalid
62.174 Follow-up corrective measures when a standard threshold shift is detected
62.175 Notification of results; reporting requirements
62.180 Training
62.190 Records
Appendix to part 62

Authority: 30 U.S.C. 811.

§ 62.100 Purpose and scope; effective date.

The purpose of these standards is to prevent the occurrence and reduce the progression of occupational noise-induced hearing loss among miners. This part sets forth mandatory health standards for each surface and underground metal, nonmetal, and coal mine subject to the Federal Mine Safety and Health Act of 1977. The provisions of this part become effective September 13, 2000.

§ 62.101 Definitions.

The following definitions apply in this part:

Access. The right to examine and copy records.

Action level. An 8-hour time-weighted average sound level (TWA_8) of 85 dBA, or equivalently a dose of 50%, integrating all sound levels from 80 dBA to at least 130 dBA.

Audiologist. A professional, specializing in the study and rehabilitation of hearing, who is certified by the American Speech-Language-Hearing Association (ASHA) or licensed by a state board of examiners.

Baseline audiogram. The audiogram recorded in accordance with § 62.170(a) of this part against which subsequent audiograms are compared to determine the extent of hearing loss.

Criterion level. The sound level which if constantly applied for 8 hours results in a dose of 100% of that permitted by the standard.

Decibel (dB). A unit of measure of sound pressure levels, defined in one of two ways, depending upon the use:

(1) For measuring sound pressure levels, the decibel is 20 times the common logarithm of the ratio of the measured sound pressure to the standard reference sound pressure of 20 micropascals (μPa), which is the threshold of normal hearing sensitivity at 1000 Hertz (Hz).

(2) For measuring hearing threshold levels, the decibel is the difference between audiometric zero (reference pressure equal to 0 hearing threshold level) and the threshold of hearing of the individual being tested at each test frequency.

Dual Hearing Protection Level. A TWA_8 of 105 dBA, or equivalently, a dose of 800% of that permitted by the standard, integrating all sound levels from 90 dBA to at least 140 dBA.

Exchange rate. The amount of increase in sound level, in decibels, which would require halving of the allowable exposure time to maintain the same noise dose. For the purposes of this part, the exchange rate is 5 decibels (5 dB).

Hearing protector. Any device or material, capable of being worn on the head or in the ear canal, sold wholly or in part on the basis of its ability to reduce the level of sound entering the ear, and which has a scientifically accepted indicator of noise reduction value.

Hertz (Hz). Unit of measurement of frequency numerically equal to cycles per second.

Medical pathology. A condition or disease affecting the ear.

Miner's designee. Any individual or organization to whom a miner gives written authorization to exercise a right of access to records.

Qualified technician. A technician who has been certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC), or by another recognized organization offering equivalent certification.

Permissible exposure level. A TWA_8 of 90 dBA or equivalently a dose of 100% of that permitted by the standard, integrating all sound levels from 90 dBA to at least 140 dBA.

Reportable hearing loss. A change in hearing sensitivity for the worse, relative to the miner's baseline audiogram, or the miner's revised baseline audiogram where one has been established in accordance with § 62.170(c)(2), of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear.

Revised baseline audiogram. An annual audiogram designated to be used in lieu of a miner's original baseline audiogram in measuring changes in hearing sensitivity as a result of the circumstances set forth in §§ 62.170(c)(1) or 62.170(c)(2) of this part.

Sound level. The sound pressure level in decibels measured using the A-weighting network and a slow response, expressed in the unit dBA.

Standard threshold shift. A change in hearing sensitivity for the worse relative to the miner's baseline audiogram, or relative to the most recent revised baseline audiogram where one has been established, of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

Time-weighted average–8 hour (TWA_8). The sound level which, if constant over 8 hours, would result in the same noise dose as is measured.

§ 62.110 Noise exposure assessment.

(a) The mine operator must establish a system of monitoring that evaluates each miner's noise exposure sufficiently to determine continuing compliance with this part.

(b) The mine operator must determine a miner's noise dose (D, in percent) by using a noise dosimeter or by computing the formula: $D=100(C_1/T_1+C_2/T_2+ \ldots +C_n/T_n)$, where Cn is the total time the miner is exposed at a specified sound level, and T_n is the reference duration of exposure at that sound level shown in Table 62–1.

(1) The mine operator must use Table 62–2 when converting from dose readings to equivalent TWA_8 readings.

(2) A miner's noise dose determination must:

(i) Be made without adjustment for the use of any hearing protector;

(ii) Integrate all sound levels over the appropriate range;

(iii) Reflect the miner's full work shift;
(iv) Use a 90-dB criterion level and a 5-dB exchange rate; and
(v) Use the A-weighting and slow response instrument settings.
(c) *Observation of monitoring.* The mine operator must provide affected miners and their representatives with an opportunity to observe noise exposure monitoring required by this section and must give prior notice of the date and time of intended exposure monitoring to affected miners and their representatives.
(d) *Miner notification.* The mine operator must notify a miner of his or her exposure when the miner's exposure is determined to equal or exceed the action level, exceed the permissible exposure level, or exceed the dual hearing protection level, provided the mine operator has not notified the miner of an exposure at such level within the prior 12 months. The mine operator must base the notification on an exposure evaluation conducted either by the mine operator or by an authorized representative of the Secretary of Labor. The mine operator must notify the miner in writing within 15 calendar days of:
(1) The exposure determination; and
(2) the corrective action being taken.
(e) The mine operator must maintain a copy of any such miner notification, or a list on which the relevant information about that miner's notice is recorded, for the duration of the affected miner's exposure at or above the action level and for at least 6 months thereafter.

§ 62.120 Action level.

If during any work shift a miner's noise exposure equals or exceeds the action level the mine operator must enroll the miner in a hearing conservation program that complies with § 62.150 of this part.

§ 62.130 Permissible exposure level.

(a) The mine operator must assure that no miner is exposed during any work shift to noise that exceeds the permissible exposure level. If during any work shift a miner's noise exposure exceeds the permissible exposure level, the mine operator must use all feasible engineering and administrative controls to reduce the miner's noise exposure to the permissible exposure level, and enroll the miner in a hearing conservation program that complies with § 62.150 of this part. When a mine operator uses administrative controls to reduce a miner's exposure, the mine operator must post the procedures for such controls on the mine bulletin board and provide a copy to the affected miner.

(b) If a miner's noise exposure continues to exceed the permissible exposure level despite the use of all feasible engineering and administrative controls, the mine operator must continue to use the engineering and administrative controls to reduce the miner's noise exposure to as low a level as is feasible.

(c) The mine operator must assure that no miner is exposed at any time to sound levels exceeding 115 dBA, as determined without adjustment for the use of any hearing protector.

§ 62.140 Dual hearing protection level.

If during any work shift a miner's noise exposure exceeds the dual hearing protection level, the mine operator must, in addition to the actions required for noise exposures that exceed the permissible exposure level, provide and ensure the concurrent use of both an ear plug and an ear muff type hearing protector. The following table sets out mine operator actions under MSHA's noise standard.

Provision	Condition	Action required by the mine operator
§ 62.120	Miner's noise exposure is less than the action level.	None.
§ 62.120	Miner's exposure equals or exceeds the action level, but does not exceed the permissible exposure level (PEL).	Operator enrolls the miner in hearing conservation program (HCP) which includes (1) a system of monitoring, (2) voluntary, with two exceptions, use of operator-provided hearing protectors, (3) voluntary audiometric testing, (4) training, and (5) record keeping.
§ 62.130	Miner's exposure exceeds the PEL	Operator uses/continues to use all feasible engineering and administrative controls to reduce exposure to PEL; enrolls the miner in a HCP including ensured use of operator-provided hearing protectors; posts administrative controls and provides copy to affected miner; must never permit a miner to be exposed to sound levels exceeding 115 dBA.
§ 62.140	Miner's exposure exceeds the dual hearing protection level.	Operator enrolls the miner in a HCP, continues to meet all the requirements of § 62.130, ensures concurrent use of earplug and earmuff.

§ 62.150 Hearing conservation program.

A hearing conservation program established under this part must include:
(a) A system of monitoring under § 62.110 of this part;
(b) The provision and use of hearing protectors under § 62.160 of this part;
(c) Audiometric testing under §§ 62.170 through 62.175 of this part;
(d) Training under § 62.180 of this part; and
(e) Recordkeeping under § 62.190 of this part.

§ 62.160 Hearing protectors.

(a) A mine operator must provide a hearing protector to a miner whose noise exposure equals or exceeds the action level under § 62.120 of this part. In addition, the mine operator must:
(1) Train the miner in accordance with § 62.180 of this part;
(2) Allow the miner to choose a hearing protector from at least two muff types and two plug types, and in the event dual hearing protectors are required, to choose one of each type;
(3) Ensure that the hearing protector is in good condition and is fitted and maintained in accordance with the manufacturer's instructions;
(4) Provide the hearing protector and necessary replacements at no cost to the miner; and
(5) Allow the miner to choose a different hearing protector(s), if wearing the selected hearing protector(s) is subsequently precluded due to medical pathology of the ear.
(b) The mine operator must ensure, after satisfying the requirements of paragraph (a) of this section, that a miner wears a hearing protector whenever the miner's noise exposure exceeds the permissible exposure level before the implementation of engineering and administrative controls, or if the miner's noise exposure continues to exceed the permissible exposure level despite the use of all feasible engineering and administrative controls.
(c) The mine operator must ensure, after satisfying the requirements of paragraph (a) of this section, that a miner wears a hearing protector when

the miner's noise exposure is at or above the action level, if:

(1) The miner has incurred a standard threshold shift; or

(2) More than 6 months will pass before the miner can take a baseline audiogram.

§ 62.170 Audiometric testing.

The mine operator must provide audiometric tests to satisfy the requirements of this part at no cost to the miner. A physician or an audiologist, or a qualified technician under the direction or supervision of a physician or an audiologist must conduct the tests.

(a) *Baseline audiogram*. The mine operator must offer miners the opportunity for audiometric testing of the miner's hearing sensitivity for the purpose of establishing a valid baseline audiogram to compare with subsequent annual audiograms. The mine operator may use an existing audiogram of the miner's hearing sensitivity as the baseline audiogram if it meets the audiometric testing requirements of § 62.171 of this part.

(1) The mine operator must offer and provide within 6 months of enrolling the miner in a hearing conservation program, audiometric testing which results in a valid baseline audiogram, or offer and provide the testing within 12 months where the operator uses mobile test vans to do the testing.

(2) The mine operator must notify the miner to avoid high levels of noise for at least 14 hours immediately preceding the baseline audiogram. The mine operator must not expose the miner to workplace noise for the 14-hour quiet period before conducting the audiometric testing to determine a baseline audiogram. The operator may substitute the use of hearing protectors for this quiet period.

(3) The mine operator must not establish a new baseline audiogram or a new revised baseline audiogram, where one has been established, due to changes in enrollment status in the hearing conservation program. The mine operator may establish a new baseline or revised baseline audiogram for a miner who is away from the mine for more than 6 consecutive months.

(b) *Annual audiogram*. After the baseline audiogram is established, the mine operator must continue to offer subsequent audiometric tests at intervals not exceeding 12 months for as long as the miner remains in the hearing conservation program.

(c) *Revised baseline audiogram*. An annual audiogram must be deemed to be a revised baseline audiogram when, in the judgment of the physician or audiologist:

(1) A standard threshold shift revealed by the audiogram is permanent; or (2) The hearing threshold shown in the annual audiogram indicates significant improvement over the baseline audiogram.

§ 62.171 Audiometric test procedures.

(a) All audiometric testing under this part must be conducted in accordance with scientifically validated procedures. Audiometric tests must be pure tone, air conduction, hearing threshold examinations, with test frequencies including 500, 1000, 2000, 3000, 4000, and 6000 Hz. Each ear must be tested separately.

(b) The mine operator must compile an audiometric test record for each miner tested. The record must include:

(1) Name and job classification of the miner tested;

(2) A copy of all of the miner's audiograms conducted under this part;

(3) Evidence that the audiograms were conducted in accordance with paragraph (a) of this section;

(4) Any exposure determination for the miner conducted in accordance with § 62.110 of this part; and

(5) The results of follow-up examination(s), if any.

(c) The operator must maintain audiometric test records for the duration of the affected miner's employment, plus at least 6 months, and make the records available for inspection by an authorized representative of the Secretary of Labor.

§ 62.172 Evaluation of audiograms.

(a) The mine operator must:

(1) Inform persons evaluating audiograms of the requirements of this part and provide those persons with a copy of the miner's audiometric test records;

(2) Have a physician or an audiologist, or a qualified technician who is under the direction or supervision of a physician or audiologist:

(i) Determine if the audiogram is valid; and

(ii) Determine if a standard threshold shift or a reportable hearing loss, as defined in this part, has occurred.

(3) Instruct the physician, audiologist, or qualified technician not to reveal to the mine operator, without the written consent of the miner, any specific findings or diagnoses unrelated to the miner's hearing loss due to occupational noise or the wearing of hearing protectors; and

(4) Obtain the results and the interpretation of the results of audiograms conducted under this part within 30 calendar days of conducting the audiogram.

(b)(1) The mine operator must provide an audiometric retest within 30 calendar days of receiving a determination that an audiogram is invalid, provided any medical pathology has improved to the point that a valid audiogram may be obtained.

(2) If an annual audiogram demonstrates that the miner has incurred a standard threshold shift or reportable hearing loss, the mine operator may provide one retest within 30 calendar days of receiving the results of the audiogram and may use the results of the retest as the annual audiogram.

(c) In determining whether a standard threshold shift or reportable hearing loss has occurred, allowance may be made for the contribution of aging (presbycusis) to the change in hearing level. The baseline, or the revised baseline as appropriate, and the annual audiograms used in making the determination should be adjusted according to the following procedure:

(1) Determine from Tables 62–3 or 62–4 the age correction values for the miner by:

(i) Finding the age at which the baseline audiogram or revised baseline audiogram, as appropriate, was taken, and recording the corresponding values of age corrections at 2000, 3000, and 4000 Hz;

(ii) Finding the age at which the most recent annual audiogram was obtained and recording the corresponding values of age corrections at 2000, 3000, and 4000 Hz; and

(iii) Subtracting the values determined in paragraph (c)(1)(i) of this section from the values determined in paragraph (c)(1)(ii) of this section. The differences calculated represent that portion of the change in hearing that may be due to aging.

(2) Subtract the values determined in paragraph (c)(1)(iii) of this section from the hearing threshold levels found in the annual audiogram to obtain the adjusted annual audiogram hearing threshold levels.

(3) Subtract the hearing threshold levels in the baseline audiogram or revised baseline audiogram from the adjusted annual audiogram hearing threshold levels determined in paragraph (c)(2) of this section to obtain the age-corrected threshold shifts.

§ 62.173 Follow-up evaluation when an audiogram is invalid.

(a) If a valid audiogram cannot be obtained due to a suspected medical pathology of the ear that the physician or audiologist believes was caused or

aggravated by the miner's occupational exposure to noise or the wearing of hearing protectors, the mine operator must refer the miner for a clinical-audiological evaluation or an otological examination, as appropriate, at no cost to the miner.

(b) If a valid audiogram cannot be obtained due to a suspected medical pathology of the ear that the physician or audiologist concludes is unrelated to the miner's occupational exposure to noise or the wearing of hearing protectors, the mine operator must instruct the physician or audiologist to inform the miner of the need for an otological examination.

(c) The mine operator must instruct the physician, audiologist, or qualified technician not to reveal to the mine operator, without the written consent of the miner, any specific findings or diagnoses unrelated to the miner's occupational exposure to noise or the wearing of hearing protectors.

§ 62.174 Follow-up corrective measures when a standard threshold shift is detected.

The mine operator must, within 30 calendar days of receiving evidence or confirmation of a standard threshold shift, unless a physician or audiologist determines the standard threshold shift is neither work-related nor aggravated by occupational noise exposure:

(a) Retrain the miner, including the instruction required by § 62.180 of this part;

(b) Provide the miner with the opportunity to select a hearing protector, or a different hearing protector if the miner has previously selected a hearing protector, from among those offered by the mine operator in accordance with § 62.160 of this part; and

(c) Review the effectiveness of any engineering and administrative controls to identify and correct any deficiencies.

§ 62.175 Notification of results; reporting requirements.

(a) The mine operator must, within 10 working days of receiving the results of an audiogram, or receiving the results of a follow-up evaluation required under § 62.173 of this part, notify the miner in writing of:

(1) The results and interpretation of the audiometric test, including any finding of a standard threshold shift or reportable hearing loss; and

(2) The need and reasons for any further testing or evaluation, if applicable.

(b) When evaluation of the audiogram shows that a miner has incurred a reportable hearing loss as defined in this part, the mine operator must report such loss to MSHA as a noise-induced hearing loss in accordance with part 50 of this title, unless a physician or audiologist has determined that the loss is neither work-related nor aggravated by occupational noise exposure.

§ 62.180 Training.

(a) The mine operator must, within 30 days of a miner's enrollment into a hearing conservation program, provide the miner with training. The mine operator must give training every 12 months thereafter if the miner's noise exposure continues to equal or exceed the action level. Training must include:

(1) The effects of noise on hearing;

(2) The purpose and value of wearing hearing protectors;

(3) The advantages and disadvantages of the hearing protectors to be offered;

(4) The various types of hearing protectors offered by the mine operator and the care, fitting, and use of each type;

(5) The general requirements of this part;

(6) The mine operator's and miner's respective tasks in maintaining mine noise controls; and

(7) The purpose and value of audiometric testing and a summary of the procedures.

(b) The mine operator must certify the date and type of training given each miner, and maintain the miner's most recent certification for as long as the miner is enrolled in the hearing conservation program and for at least 6 months thereafter.

§ 62.190 Records.

(a) The authorized representatives of the Secretaries of Labor and Health and Human Services must have access to all records required under this part. Upon written request, the mine operator must provide, within 15 calendar days of the request, access to records to:

(1) The miner, or with the miner's written consent, the miner's designee, for all records that the mine operator must maintain for that individual miner under this part;

(2) Any representative of miners designated under part 40 of this title, to training certifications compiled under § 62.180(b) of this part and to any notice of exposure determination under § 62.110(d) of this part, for the miners whom he or she represents; and

(3) Any former miner, for records which indicate his or her own exposure.

(b) When a person with access to records under paragraphs (a)(1), (a)(2), or (a)(3) of this section requests a copy of a record, the mine operator must provide the first copy of such record at no cost to that person, and any additional copies requested by that person at reasonable cost.

(c) Transfer of records. (1) The mine operator must transfer all records required to be maintained by this part, or a copy thereof, to a successor mine operator who must maintain the records for the time period required by this part.

(2) The successor mine operator must use the baseline audiogram, or revised baseline audiogram, as appropriate, obtained by the original mine operator to determine the existence of a standard threshold shift or reportable hearing loss.

Appendix to Part 62

TABLE 62–1.—REFERENCE DURATION

dBA	T (hours)
80	32.0
85	16.0
86	13.9
87	12.1
88	10.6
89	9.2
90	8.0
91	7.0
92	6.1
93	5.3
94	4.6
95	4.0
96	3.5
97	3.0
98	2.6
99	2.3
100	2.0
101	1.7
102	1.5
103	1.3
104	1.1
105	1.0
106	0.87
107	0.76
108	0.66
109	0.57
110	0.50
111	0.44
112	0.38
113	0.33
114	0.29
115	0.25

At no time shall any excursion exceed 115 dBA. For any value, the reference duration (T) in hours is computed by: $T = 8/2^{(L-90)5}$ where L is the measured A-weighted, slow-response sound pressure level.

TABLE 62–2.—"DOSE"/TWA_8 EQUIVALENT

Dose (percent)	TWA_8
25	80
29	81
33	82
38	83
44	84
50	85
57	86
66	87

TABLE 62–2.—"DOSE"/TWA_8 **Equivalent**—Continued

Dose (percent)	TWA_8
76	88
87	89
100	90
115	91
132	92
152	93
174	94
200	95
230	96
264	97
303	98
350	99
400	100
460	101
530	102
610	103
700	104
800	105
920	106
1056	107
1213	108
1393	109
1600	110
1838	111
2111	112
2425	113
2786	114
3200	115

Interpolate between the values found in this Table, or extend the Table, by using the formula: $TWA_8 = 16.61 \log_{10} (D/100) + 90$.

TABLE 62–3.—AGE CORRECTION VALUE IN DECIBELS FOR MALES (SELECTED FREQUENCIES)

Age (years)	kHz		
	2	3	4
20 or less	3	4	5
21	3	4	5
22	3	4	5
23	3	4	6
24	3	5	6
25	3	5	7

TABLE 62–3.—AGE CORRECTION VALUE IN DECIBELS FOR MALES (SELECTED FREQUENCIES)—Continued

Age (years)	kHz		
	2	3	4
26	4	5	7
27	4	6	7
28	4	6	8
29	4	6	8
30	4	6	9
31	4	7	9
32	5	7	10
33	5	7	10
34	5	8	11
35	5	8	11
36	5	9	12
37	6	9	12
38	6	9	13
39	6	10	14
40	6	10	14
41	6	10	14
42	7	11	16
43	7	12	16
44	7	12	17
45	7	13	18
46	8	13	19
47	8	14	19
48	8	14	20
49	9	15	21
50	9	16	22
51	9	16	23
52	10	17	24
53	10	18	25
54	10	18	26
55	11	19	27
56	11	20	28
57	11	21	29
58	12	22	31
59	12	22	32
60 or more	13	23	33

TABLE 62–4.—AGE CORRECTION VALUE IN DECIBELS FOR FEMALES (SELECTED FREQUENCIES)

Age (years)	kHz		
	2	3	4
20 or less	4	3	3
21	4	4	3
22	4	4	4
23	5	4	4
24	5	4	4
25	5	4	4
26	5	5	4
27	5	5	5
28	5	5	5
29	5	5	5
30	6	5	5
31	6	6	5
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48	9	11	11
49	9	11	11
50	10	11	12
51	10	11	12
52	10	12	13
53	10	13	13
54	11	13	14
55	11	14	14
56	11	14	15
57	11	15	15
58	12	15	16
59	12	16	16
60 or more	12	16	17

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Federal Register

Monday
September 13, 1999

Part III

Department of Labor

30 CFR Parts 56, 57, 62, 70 and 71

Occupational Noise Exposure Final Rule; Correction

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70 and 71

RIN 1219–AA53

Occupational Noise Exposure; Correction

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects the preamble to the final rule for health standards for occupational noise exposure published elsewhere in today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

Correction

MSHA is publishing elsewhere in this issue of the **Federal Register** a final rule on health standards for occupational noise exposure. This document adds text inadvertently left out of the preamble. Certain text that should have been included under the heading ''Section 62.130 Permissible exposure level'' was inadvertently omitted. The text should have followed this paragraph:

> Although many commenters may prefer to use hearing protectors in lieu of engineering or administrative controls to protect miners from noise overexposures, MSHA has concluded that the scientific evidence does not support this position, and that the approach taken in the final rule best protects miners from further noise-induced hearing loss.

The text to be added reads as follows:

MSHA noted earlier in this discussion that it had conducted a study of the noise reduction values of hearing protectors in the actual mining environment. The inability to accurately predict the noise reduction provided by a hearing protector to an individual miner led to MSHA's decision to reject the use of hearing protectors as the primary means of reducing a miner's noise exposure to the permissible exposure level. Not only do engineering and administrative controls best protect miners from noise-induced hearing loss, they increase the protection afforded by a hearing protector.

One commenter requested that MSHA provide a definition of an engineering noise control. MSHA addresses engineering controls in significant detail under the discussion of feasibility in Part VI of this preamble.

Several commenters wanted MSHA to recognize the noise-cancellation ear muff as an engineering noise control. Noise-cancellation ear muffs are hearing protectors that are designed to generate sound that cancels harmful noise signals under the cup of the ear muff. MSHA has not found any data substantiating a standardized method of evaluating the efficacy of noise-cancellation ear muffs in a manner similar to engineering controls. Also, noise-cancellation ear muffs in the active mode cannot be evaluated using the American National Standards Institute (ANSI) method for evaluating hearing protectors. Noise-cancellation ear muffs are not engineering controls, and the final rule does not accept them as such but does recognize them as hearing protectors, where an NRR value has been assigned under EPA regulations.

Some other commenters believed that the use of operator cabs, which are engineering controls that allow the miner to work within a protective sound enclosure, creates a safety hazard, especially in low-seam underground mines. Although the Agency has limited experience with the use of noise-control cabs in underground mines, MSHA has had extensive experience with the use of cabs in underground mines to provide protection from falling objects, including roof falls. This experience demonstrates that equipment cabs can be safely used in the underground mine environment. In any case, MSHA would not expect a mine operator to use a cab as an engineering control if it created a safety hazard. As a practical matter, the final rule provides mine operators with significant flexibility in choosing among various noise controls, and does not compel the use of one type of control over another.

Many commenters believe administrative controls create unnecessary problems for mine operators. Some of their concerns include restrictions in labor contracts, the limited numbers of qualified miners who can be rotated in and out of a job, and the difficulty in tracking rotated miners. MSHA has concluded that the effectiveness of administrative controls, when they are feasible, compels their application prior to allowing mine operators to use personal hearing protectors to control their miners' noise exposures.

Regarding the feasibility of noise controls, the American Portland Cement Alliance commented that there are several operational areas where it is particularly difficult and expensive to control noise, for example raw and finish ball mills, crusher and screening areas, and coal unloading, compressor and blower rooms. In one example, the commenter estimated that it would cost ''hundreds of thousands of dollars'' in manpower, materials, lost production and equipment, to retrofit rubber liners in the interior walls of the mills. The commenter also noted that alternative means of milling would cost between 3-million and 10-million dollars per ball mill. Section VI of this preamble discusses the feasibility of a permissible exposure level for the mining industry, and, in addition, the feasibility of complying with the permissible exposure level for a particular operator. Regarding noise controls which may be feasible for particular operators of milling operations, the Agency intends to adhere to the enforcement guidelines set forth in volume IV of its existing program policy manual because the permissible exposure level in the final rule remains unchanged from the existing noise standards. The program policy manual indicates that frequently, mining personnel are exposed to noise levels of up to 114 dBA from milling operations, and that engineering noise controls may be feasible for such operations. Such controls include: resiliently backed liners; acoustically treated control booths; full or partial topless enclosures around mill equipment or employee work locations; and acoustic baffles suspended above enclosures. In order to determine which control or combination of controls are feasible and effective to reduce the noise exposure of employees working in mills, it is usually necessary to do a time study to pinpoint the locations and noise sources contributing to the employee's overexposure. In some situations an acoustically treated control booth may be all that is needed, in others more extensive treatments may be necessary. Administrative controls may also be feasible to limit employee exposure to particularly noisy areas of a mill.

Control booths can be constructed and acoustically treated by mine operators or can be purchased from commercial sources. Resiliently backed liners can be put on chutes, bins and other drop or impact points to reduce noise from these sources. In situations where numerous employees are exposed to the noise, full or partial topless enclosures around the mill may be feasible. Dependent upon the noise reduction required to lower an employee's exposure to the permissible exposure level, acoustical absorptive material may be needed within or above the enclosure. Acoustical baffles suspended above such enclosures has proven to be an effective method of reducing the overall noise levels.

The cost for such enclosures is dependent on the type of materials utilized in its construction and the

overall size of the enclosure. In three demonstrations of this technology, total material costs have ranged between $3500 and $7000. MSHA intends to assess, on a case-by-case basis, whether engineering and administrative controls are feasible at a particular mine that is experiencing an overexposure.

Dated: September 9, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the ''Thomas S. Foley United States Courthouse'', and the plaza at the south entrance of such building and courthouse as the ''Walter F. Horan Plaza''. (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–034–00102–1)	40.00	[8] July 1, 1999
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–1)	30.00	July 1, 1999
*1927–End	(869–034–00108–0)	43.00	July 1, 1999
30 Parts:			
*1–199	(869–034–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–034–00113–1)	46.00	July 1, 1998
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
*1–190	(869–034–00114–4)	46.00	July 1, 1999
191–399	(869–034–00115–7)	51.00	July 1, 1998
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	[4] July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–034–00147–5)	37.00	July 1, 1998
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00149–1)	23.00	July 1, 1998
260–265	(869–034–00150–9)	29.00	July 1, 1998
266–299	(869–034–00151–3)	30.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
400–424	(869–034–00153–0)	33.00	July 1, 1998
425–699	(869–034–00154–8)	42.00	July 1, 1998
700–789	(869–034–00155–6)	41.00	July 1, 1998
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
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400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
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48 Chapters:			
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1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
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49 Parts:			
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50 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.